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The question as to the right to the remains of the dead has frequently arisen as between those claiming such right through marriage, descent or legal representation. But the somewhat novel question recently arose before the Supreme Court of California as to the right of an individual to make a valid and binding testamentary disposition of his own body after death. The court held that he had, and also decided that a probate court had no jurisdiction to award the custody of the body of a decedent to a stranger to his blood, to the exclusion of the surviving wife, with directions to such stranger to transport the body to another place for interment; that neither the probate court, nor the personal representative of a decedent, has any right to his body, nor any right to control the manner of disposing of the same, as against the widow of decedent. O'Donnell v. Slack, 55 Pac. Rep. 906. The duty of the burial of the dead, the court says, is made an express legal obligation; but, aside from the obligation, there is a right, well defined and universally recognized, that in disposing of the body of deceased the last sad offices belong of right to the next of kin, within which phrase, as here employed, is included the surviving husband or wife. This right had its origin in sentiment, in affection for the dead, in religious belief in some form of future life. It therefore early became a subject of cognizance by the ecclesiastical courts. But, while thus having its origin in affection and religious sentiment, it soon came to be recognized as a strictly legal right; and the next of kin, while not, in the full proprietary sense, "owning" the body of deceased, have property rights in the body which will be protected, and for a violation of which they are entitled to indemnification. Thus, if the right is interfered with, damages will be awarded. Smiley v. Bartlett, 6 Ohio Cir. Ct. R. 234. "That there is no right of 'property' in a dead body, using the word in its ordinary sense, may well be admitted, yet the burial of the dead is a subject which interests the feelings of mankind to a much greater degree than many matters of actual property. There is a duty, imposed by the universal feelings of mankind, to be discharged by some one toward the dead, a duty, and we may also say a right, to protect from violation, any duty on the part of others to abstain from violation; and it may therefore be considered as a sort of *quasi*-property, and it would be discreditable in any system of law not to provide a remedy in such a case." Pierce v. Proprietors, 10 R. I. 227. The whole question is learnedly considered in Ruggles' Report, 4 Bradf. Sur. 503. The conclusions there reached are those which have been generally adopted by the courts of the land. One of these conclusions is "that the right to bury a corpse and to preserve its remains is a legal right, which the courts of law will recognize and protect." Another is that "such right, in the absence of any testamentary disposition, belongs exclusively to the next of kin." And another, that "the right to protect the remains includes the right to preserve them by separate burial, to select the place of sepulture, and to change it at pleasure." In employing the phrase "next of kin," Mr. Ruggles explains that it was not used for the purpose of denying or even questioning the legal right of a surviving husband to bury his wife's remains. Hackett v. Hackett, 18 R. I. 155, 26 Atl. Rep. 42. The same right belongs to the surviving wife. Hackett v. Hackett, *supra*; Larson v. Chase, 47 Minn. 307, 50 N. W. Rep. 238; Perley, Mortuary Law, 27; Hadsell v. Hadsell, 7 Ohio Cir. Ct. R. 196; Durell v. Hayward, 9 Gray, 248.

Another interesting question on the subject of rights in dead bodies, which, as the court remarked, was "happily more novel than difficult," arose in a recent Michigan case—Keyes v. Konkel. The question was whether replevin would lie for a human corpse. The court held not. The replevin statutes of that State, it appears, provide for a judgment for defendant, when the plaintiff fails in his case, for a return of the property, or for its value. The court very properly calls attention to the fact that no return of the property can be ordered in case of the replevin of a dead body, and it is equally true that its value in money can neither be appraised nor ascertained by a jury. It was formerly held in England that there can be no property in a human body. Williams v. Williams, L. R. 20 Ch. Div. 659, also reported in Am. L. Reg.

508; Guthrie v. Weaver, 1 Mo. App. 141; Magher v. Driscoll, 99 Mass. 284; Pierce v. Swan Point Cemetery, 10 R. I. 227; Wild v. Walker, 130 Mass. 422. In certain modern American cases, cited in connection with the California case, a dead body has been said to be a *quasi* property, and the right to control and bury it and to recover against one who mutilates the corpse has been maintained. Recovery for the refusal of the right to bury or for mutilation of the body is rather based upon an infringement of a right than upon the notion that the property of plaintiff has been interfered with. The recovery in such cases is not for the damage to the corpse as property, but damage to the next of kin by infringement of his right to have the body delivered to him for burial without mutilation. In numerous cases equity has taken jurisdiction to prevent interference with the control of the dead body by persons entitled to control it. See Wild v. Walker, 130 Mass. 422; Pierce v. Proprietors, etc., 10 R. I. 227, and in Reg. v. Fox, 2 Q. B. 246, the remedy by *mandamus* to a jailer was granted.

NOTES OF IMPORTANT DECISIONS.

COURTS — CONFLICT OF LAWS — ASSIGNMENT FOR BENEFIT OF CREDITORS — PREFERENCES.— The Supreme Court of Indiana has recently decided in the case of Nathan v. Lee, 52 N. E. Rep. 987, that a decision of a foreign State that an insolvent corporation of that State cannot execute a preferential mortgage to secure an antecedent debt is not binding on the courts of another State as to a mortgage of such a corporation, no statute being construed, since, as to the general principles of the common law, each State may construe the law for itself; that a preferential mortgage executed simultaneously with a general assignment is not a part of it; the assignment being declared invalid as to the mortgaged property, and the mortgagor remaining in possession over six months, and that an insolvent foreign corporation may mortgage land in Indiana to secure a *bona fide* antecedent debt, and thereby prefer one creditor over another, such action not being prohibited by the statutes of the foreign State of Indiana; and this though the preferred creditor is a resident of the foreign State. The following from the opinion of the court is a summary of the law involved in the case: "It is a well-affirmed general rule that the laws of a sister State, which either give or deny the power to contract, have no extraterritorial force or effect where the particular contract involved relates to the conveyance or incumbrance of lands situated in another State or jurisdiction. Cochran v. Benton, 126 Ind. 58, 25 N. E. Rep. 870, and authorities there cited. Such conveyances or incumbrances are considered as being governed by the law of the *situs* of the realty, and all questions relating to the validity thereof are to be determined according to that law, and not according to the law of the place of the contract, or of the domicile of the contracting parties. 6 Thomp. Corp. § 7721; Jones, Mort. § 823; Whart. Confl. Laws, §§ 273, 274; Boehme v. Rall, 51 N. J. Eq. 541, 26 Atl. Rep. 832, and authorities there cited. Another rule is that it is the restrictions or prohibitions contained in the charter of a foreign corporation, or those of the governing laws of the State where it is organized, in relation thereto, which follow it into another State. It is such restrictions or prohibitions, as a general principle, and these alone, which, under the rules of comity, are recognized and enforced in other jurisdictions, and not the general legislation or judicial decisions of the State in which such corporation is organized. The general laws, regulations, or decisions of the courts of a sister State are controlling only within its own limits, and such State has no power to give them force or effect in other jurisdictions. 2 Mor. Corp. § 967; Warren v. Bank, 149 Ill. 9, 38 N. E. Rep. 122, and cases there cited; Boehme v. Rall, *supra*; Borton v. Brines-Chase Co., 175 Pa. St. 209, 34 Atl. Rep. 597. We have examined the statutes of Ohio, introduced in evidence, which relate to corporations organized thereunder, and we discover nothing therein which can be said to forbid or prohibit an insolvent corporation of that State from mortgaging its corporate property or assets to secure a *bona fide* antecedent indebtedness of its own, and thereby prefer one or more of its creditors over others. If it appeared in this case that the mortgages in question were executed in violation of the express provisions of any of these statutes, or that the power or right of the company to execute the mortgages, depended upon a construction placed upon a statute of that State by its highest court, quite a different question would be presented for our decision.

"That an insolvent corporation, in like manner as an insolvent natural person, may, at common law, execute a mortgage upon its property to some of its creditors, and thereby create a preference, is a well-settled proposition. See 2 Cook, Stock. & Stockh. Corp. Law, § 779; Ang. & A. Corp. p. 168, § 187; 2 Mor. Corp. § 802; 1 Beach, Corp. § 358; Levering v. Bimel, 146 Ind. 545, 45 N. E. Rep. 775. Blackstone, in his Commentaries, asserts that it is necessarily and inseparably incident to every corporation aggregate that it has the power to sue or be sued, implead or be impleaded, grant or receive by its corporate name, and do all other acts as may a natural person. 1 Bl. Comm. (Cooley's Ed.) *475. In 2 Cook, Stock, Stockh. & Corp. Law, § 691, it is said: 'Corporations, unless restricted by their charters or by general statutes, may make assignments for

the benefit of creditors to the same extent that individuals may. In making the assignment, the corporation may make preferences for one or more creditors over others, or of one class of creditors over other classes. A preference by the directors of themselves is generally held to be fraudulent.' By section 5098, Burns' Rev. St. 1894 (section 3879, Rev. St. 1881), the legislature of this State has removed all doubt as to the right or power of a foreign corporation, organized for a like purpose as the one in this case, to acquire lands in this State and mortgage the same. This statute is an affirmative permission by the State to foreign corporations, organized for manufacturing and mining purposes, to purchase and hold real property in this State for the purpose of its business, and to convey or mortgage the same, as corporations of this State, organized for similar purposes, may do. It is true that this statute is not intended to confer any power or right upon a foreign corporation which is denied to it by its charter, or the governing laws of the place of its organization and domicile. As to the rights mentioned in the statute cited, it is simply permissive, and may be said to be but a recognition of the rules of comity existing between sister States. There is no question but what the indebtedness secured by these mortgages is a legitimate and *bona fide* one in all respects, and is such as the company was fully authorized, under the laws of Ohio, to contract or incur. Neither can it be said that a preference created thereby in favor of Strasburger and Levi was a part of the assignment made by the company on August 6, 1895. That assignment, as we have seen, was adjudged by the lower court to be invalid and of no effect so far as it attempted to assign or transfer property owned by the company situated in Dearborn county, Ind.; and the mortgaged premises apparently remained under the dominion of the company, after the execution of the mortgages, for a period of over six months, until the appointment of the receiver by the Dearborn circuit court on February 22, 1896.

"The power of this corporation, under the circumstances, to make the mortgages, and thereby prefer these creditors over others, is not prohibited, as we have seen, by the statutes of its own State; neither is it denied by the rules of the common law or of the laws of this State. The *situs* of the mortgaged premises being in Indiana, it is evident, under the circumstances, that the parties to the mortgages at the time of their execution must have contemplated their enforcement, if necessary, in the courts of this State. If these mortgages are to be adjudged invalid, and the right of appellants to enforce them denied, by the courts of this State, these results must follow by virtue of the rule announced and adopted by the Supreme Court of Ohio in Rouse v. Bank, *supra*. In that decision the court did not construe or interpret any statute of that State in relation to the execution of a mortgage by an insolvent corporation. The court therein expressly recognizes the fact that decisions of the higher courts of other jurisdictions are conflicting in respect to the question in dispute in that appeal; and the court expressly admits that it is one of first impression, so far as that court is concerned, and, therefore, it is said, that it is at liberty to adopt the rule which in its judgment best coincides with justice and right. The rule adopted by the court in the case in question, and the one which controlled the question therein involved, is but an application of the equitable principle which arises out of what is denominated the 'trust fund doctrine.' The foundation upon which this rule or doctrine, as recognized in the Rouse case, and which now prevails in Ohio and other States, is said to rest, is that the assets or property of a corporation, when it becomes insolvent and has ceased to be a going concern, *eo instante* becomes a trust fund for the benefit of its creditors, and, under the circumstances, its officers, being trustees for all of its creditors, cannot lawfully dispose of or incumber the property otherwise than for the equal benefit of all of its creditors. This doctrine or rule does not prevail in this jurisdiction, and this court has declined to accept or enforce it. See Henderson v. Trust Co., 143 Ind. 561, 40 N. E. Rep. 516; First Nat. Bank v. Dovetail Body & Gear Co., 143 Ind. 534, 42 N. E. Rep. 924; Levering v. Bimel, *supra;* First Nat. Bank v. Dovetail Body & Gear Co., 143 Ind. 550, 40 N. E. Rep. 810."

ACTION—CONSPIRACY.—In Doremus v. Hennessey, 52 N. E. Rep. 924, decided by the Supreme Court of Illinois, it appeared that plaintiff conducted a laundry business, engaging others to do the work, she receiving and delivering the same to her customers. Upon her refusal to increase the price for her work in accordance with a scale fixed by a laundrymen's association, defendants combined, and caused the parties who had contracted to do her work to break their contracts and refuse to do the same longer, and induced others to refuse to do the same, in consequence of which plaintiff's business was destroyed. It was held that an action would lie for the damages sustained. The court said in part: "It is urged by appellants that they cannot be held liable for inducing certain persons named in the declaration to terminate their contractual relations with appellee, because their acts could not produce the injuries complained of without an independent force, which was the act of the parties themselves; and these appellants, it is urged, cannot be held liable for an intervening cause of damages sufficient to cause the injury, and that the refusal of different persons to work for the appellee was sufficient, of itself, to occasion injury for which the appellants cannot be held responsible. The first branch of this proposition has been disposed of by what we have heretofore said, and the authorities above cited. In Lumley v. Gye, 2 El. & Bl. 216, it was said: 'He who maliciously procures a damage to another by a violation of his right ought to be made to indemnify.' In Bowen

v. Hall, 6 Q. B. Div. 333, it was said: 'Merely to persuade the person to break his contract may not be wrongful in law or in fact; but, if the persuasion be used for the direct purpose of injuring the plaintiff, * * * it is actionable, if injury ensues from it.' The second branch of the proposition, in which it is urged that appellants could not produce the injuries complained of without the intervention of an independent force, presents the question whether the proximate cause of the injury is a question of fact. It has been settled by the adjudication of this court, so far as this question is here concerned, that in this State what was the cause of the injury, or the combination of causes producing it, is a question of fact. Whether the injury and damages sustained by plaintiff resulted from the acts of the defendant, or were the result of a new, independent factor, for which appellants were not responsible, cannot be determined by the court as a question of law, unless the fact be conceded, or the proof be substantially all to that effect. Car Co. v. Bluhm, 109 Ill. 20; City of Mt. Carmel v. Howell, 137 Ill. 91, 27 N. E. Rep. 77; Meyer v. Butterbrodt, 146 Ill. 131, 34 N. E. Rep. 152. The finding of the trial and appellate courts on this question is not subject to review in this court."

INSURANCE—LOCATION OF PROPERTY.—It was held by the Supreme Court of Michigan, in Village of L'Anse v. Fire Assn., 78 N. W. Rep. 465, that a fire insurance policy covering the fire apparatus of a village, "while located and contained as described herein, and not elsewhere," does not cover a loss of such property when temporarily out of the building designated, and being used in attempting to extinguish a fire. The court said in part: "It is admitted by counsel for plaintiff that the case involves but the one question: What is the proper construction of the words in the policy, 'while located and contained as described herein and not elsewhere?' It is argued by counsel that the usual purpose and use by the plaintiff of a fire engine, hose, hose cart, and other appliances described in the policy would be to extinguish fires in the village, and that, in order to be so used, it would be, as occasion might require, temporarily out of the engine house, which would be its place of deposit when not in use; that such use must have been contemplated by both parties to the contract; and that such use must be presumed to have been taken into consideration by the defendant in fixing the rate of premium. It is said by counsel that the words 'contained in,' etc., and like expressions, were in use before the adoption of the standard form of policy, and had a well settled meaning, and, if applied to property, the natural use of which required it to be kept in one place, the insurance was lost if the property was removed to some other place, but if, however, the property was of a sort that the natural use of it required a temporary removal from the place designated in the policy, and while so temporarily absent was destroyed, it was covered by the policy; that the words 'contained in,' etc., were of further description, and indicated th place of deposit, when the property was not necessarily absent. It is, therefore, contended that, in framing the standard policy, the intention was to express and adopt this construction. On the other hand, counsel for the defendant claims that, even under the old forms of policy, the insurance did not continue while the property was removed from its place of deposit, where the limitations were as contained in this policy, to-wit: 'while located and contained as described herein, and not elsewhere.' We think the cases cited by counsel for plaintiff clearly distinguishable from the policy in suit. Here the words are plain and unambiguous, and are not susceptible of construction other than that which the words themselves import. 'While located and contained as described herein, and not elsewhere,' means that the policy covered the property only while in that particular building, and did not cover it while it was anywhere else. In Green v. Insurance Co., 60 N. W. Rep. 189, 91 Iowa, 615, the words of the policy were, 'while contained in the two-story brick and frame dwelling house,' etc. The court, in speaking of other cases to which its attention had been called by counsel for plaintiff, said: 'This contract is widely different from those in the cases cited. The evidence shows that the property was kept sometimes in the chapel and sometimes in the house, and part of it used in both places; and, if we assume that the parties, when making the contract, knew of this, we have additional reason for limiting the liability to losses while in the house. It is sufficient to say that the liability is thus limited, and the courts have no right to extend it.' This case was followed by Lakings v. Insurance Co., 94 Iowa, 476, 62 N. W. Rep. 783. In Bahr v. Insurance Co. (Sup.), 29 N. Y. Supp. 103, the limitation in the policy was, 'while located as described herein, and not elsewhere, to-wit: while contained in the frame building occupied as a wheelwright shop,' etc. The carriage was burned in a livery stable, a block and a half away from there. Judgment for plaintiff was had below, and the court said: 'This judgment cannot stand. The location of the insured property was a warranty, a breach of which avoided the policy.' This rule was recognized by this court in Wildey v. Insurance Co., 52 Mich. 446, 18 N. W. Rep. 212, and English v. Insurance Co., 55 Mich. 273, 21 N. W. Rep. 340. The court below was not in error in directing judgment in favor of defendant."

WRITTEN CONTRACT — PAROL EVIDENCE.—In Violette v. Rice, 53 N. E. Rep. 146, it was held by the Supreme Court of Massachusetts, that evidence that at the time an actress made written agreement with the proprietor of certain theatrical companies "to render services at any theaters" it was agreed that the word "services" meant services in a particular part in a certain play, contradicts the instrument, and is inadmissible, and that by written contract of employment of an actress, providing that she shall "conform to and abide by all the rules and regulations" adopted by the employer for government of his theatrical companies, she adopts the rules, though she does not know what they are.

JURISDICTION OF STATE AND FEDERAL COURTS IN ACTIONS BY AND AGAINST NATIONAL BANKS, AND RECEIVERS THEREOF.

1. *Exclusive Federal Jurisdiction.*—The exclusive jurisdiction of the federal courts is conferred by section 711 of the United States statutes, which is taken from the Judiciary Act of 1789, and does not embrace within its terms civil actions by or against corporations organized under federal statutes, and, therefore, does not affect national banks, which were conceived long after that act became a law. Two subjects, however, have been committed by the national bank act to the exclusive jurisdiction of the federal courts: First. Suits to enjoin the comptroller of the currency from placing the bank in the hands of a receiver.[1] Second. Suits by the comptroller of the currency to have a forfeiture of the bank's franchise decreed for violation of the law.[2]

2. *The Power of Congress to Confer Jurisdiction* on the federal courts in suits by and against national banks, as corporations organized under the laws of the United States, is settled in the leading case by Chief Justice Marshall, and the more recent important case by Justice Bradley.[3]

3. *The General Power to Sue, be Sued, etc.*, conferred on national banks by the act for their creation, authorizes the corporation "to sue and be sued, complain and defend, in any court of law or equity, as fully as natural persons."[4]

4. *Federal Jurisdiction Expressly Conferred.*—Prior to the Act of July 12, 1882, sec. 563, U. S. Stat., gave to the United States District Courts, and sec. 629 gave to the United States Circuit Courts, in their respective districts, jurisdiction of suits by or against any banking association under the National Bank Act.[5]

Stockholders' Liability.—By an Act of June 30, 1876, the shareholder's liability under R. S. U. S., sec. 5151, of a national bank going into voluntary liquidation under sec. 5220, may be enforced by a bill in equity in the nature of a creditors' bill, by any creditor for himself and other creditors, in any court of the United States, having original jurisdiction in equity, in the district where the bank was located;[6] but where a receiver has been appointed he brings the action against the stockholders "As provided in sec. 5234."[7] The comptroller of currency determines the necessity for such suit by the receiver, and an allegation showing that he has taken action and directed the suit, is essential to the sufficiency of the complaint or bill.[8]

5. *In such Suits the Jurisdiction of the Federal Courts, Even Before the Later Acts Referred to Below, was not Exclusive*, but only concurrent with the State courts.[9] Justice Rappallo: "The only cases in which exclusive jurisdiction is conferred by the banking act upon the courts of the United States, so far as we can find, are proceedings to enforce the forfeiture of the franchises of banking associations for violation of the act and proceedings to enjoin the comptroller of the currency from winding up the corporation through a receiver. There is nothing in the act which withdraws from the jurisdiction of the State courts civil actions to enforce rights of individuals against national banks or their officers."[10]

6. *State Courts May Exercise Jurisdiction* in all cases wherein it has not been vested exclusively in the federal courts.[11] Justice Maxwell: "The statutes of the United States extend over every State as a part of its laws; and although exclusive jurisdiction may be given to the federal courts, yet if it is not so

[1] R. S. U. S., sec. 5237; Bank v. Bank, 14 Wall. 383, 395, Clifford, J.

[2] R. S. U. S., sec. 5239.

[3] Osborn v. Bank of U. S., 9 Wheat. 738, Marshall, C. J.; Pacific R. R. Removal Cases, 115 U. S. 1, Bradley, J.

[4] R. S. U. S., sec. 5136; Bolles' Nat. Bank Act, secs. 49, 239; Pratt's Dig. N. B. Laws, 7.

[5] R. S. U. S., secs. 563, 629; Brown's Nat. Bk. Cases, 519; Pratt's Dig. N. B. Laws, 128; Bolles' Nat. Bank Act, sec. 242.

[6] 1 Sup. R. S. U. S., 107; Act June 30th, 1876; Richmond v. Irons, 121 U. S. 27, 49.

[7] 1 Sup. R. S. U. S., 107; Act June 30, 1876, sec. 1.

[8] Kennedy v. Gibson (1869), 8 Wall. 498.

[9] Bletz v. Bank (1878), 87 Pa. St. 87, 30 Am. Rep. 343; Brown's Nat. Bk. Cases, 120, 209, 386, 421; Pettilon v. Noble, 7 Biss. 449; Thompson v. Schaetzel, 2 S. Dak. 395, 50 N. W. Rep. 631; Bank v. Overman, 22 Neb. 116, 34 N. W. Rep. 107; Cook v. Bank, 52 N. Y. 96; Brinckerhoff v. Bostwick, 88 N. Y. 52, 60; Dow v. Bank (1877), 50 Vt. 112, 28 Am. Rep. 493; Picketts v. Bank (1879), 32 Ark. 346; Fresno Nat. Bk. v. Superior Ct., 83 Cal. 491, 24 Pac. Rep. 157, 159, *et seq.*

[10] Brinckerhoff v. Bostwick, 88 N. Y. 52, 61.

[11] Claflin v. Houseman, 93 U. S. 130, 136; Teal v. Felton, 12 How. 284, 292; Raisler v. Oliver, 97 Ala. 710, 12 South. Rep. 238-40, 38 Am. St. Rep. 213, n. 216; Bank v. Overman, 22 Neb. 116, 34 N. W. Rep. 107; Robinson v. Bank, 81 N. Y. 385.

given, either expressly or by necessary implication, the State courts having competent jurisdiction in other respects, may be resorted to."[12] This doctrine is now firmly established on the authority of Claflin v. Houseman,[13] which is the leading case on the subject. Therefore, a national bank, even prior to the more recent legislation cited below, was not compelled to have recourse to the federal courts but had the same right as any other person or corporation to appear as a plaintiff in the State courts, and was subject to be sued therein.[14]

7. *Jurisdiction Expressly Given State Courts.*—The original National Bank Act of February 25, 1863, sec. 59, provided that suits by and against banks organized thereunder might be brought in any circuit, district or territorial court of the United States, held within the federal judicial district in which the bank was located. By an act of June 3, 1864, this section was amended by adding: "Or in any State, county, or municipal court in the county or city in which the association is located, having jurisdiction in similar cases."[15]

8. *Now on Same Footing with Other Banks —Exception.*—By sec. 4, of the Act of July 12, 1882, providing for the extension of the corporate existence of national banks, it was "provided, however, that the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as and not other than the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun. And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed."[16]

9. *Deemed Citizen of State—Federal Jurisdiction Withdrawn—Exception.*—By the Act of March 3, 1887, relating to jurisdiction of federal courts and the removal of causes, as amended by sec. 4 of the Act of August 13, 1888, it was provided: "Section 4.—That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank."[17] Mr. Pratt's note to this section[18] is a terse, comprehensive exposition of the effect of this amendment, as a substantial re-enactment of the proviso of sec. 4, of the Act of July 12, 1882,[19] and repealing that part of secs. 629 and 563, R. S. U. S., conferring jurisdiction on the circuit and district courts respectively;[20] and also a brief digest of a number of cases involving points under the amendment. Condensed as that valuable "note" is, the limit of space forbids quoting it here, and further condensation might impair its usefulness, if not do its author injustice. In addition to the numerous cases cited in Mr. Pratt's note may be added, on the construction of the statutes as quoted in the two sections of this article last above, the list below.[21]

10. *Penalty for Taking Usury.*—Sec. 5198, R. S. U. S., expressly confers jurisdiction on the State as well as the federal courts to recover the penalties provided for taking usury by national banks.[22]

[12] Bank v. Overman, 22 Neb. 116, 34 N. W. Rep. 107, cases. Approved: Bank v. Bollong, 40 N. W. Rep. 411, *Id.* 413, 45 *Id.* 164, 56 *Id.* 209.

[13] 93 U. S. 130.

[14] 2 Morse on Bk., p. 1293, citing Bank v. Hubbard, 49 Vt. 1; Adams v. Daunis, 29 La. Ann. 315.

[15] Bolles' Nat. Bank Act, sec. 163, p. 160; Bank v. Bank (1871), 14 Wall. 383.

[16] 1 Sup. R. S. U. S., p. 354, sec. 4; Pratt's Dig. N. B. Laws, 154; Bank v. Cooper, 120 U. S. 778, 7 Sup. Ct. Rep. 777.

[17] 1 Sup. R. S. U. S., p. 614, sec. 4; Bolles' Nat. Bank Act, sec. 253, p. 163, cases, n. 5.

[18] Pratt's Dig. N. B. Laws, 165-7.

[19] See section 8 of this article.

[20] See section 4 of this article.

[21] Cont. Nat. Bk. v. Folsom, 78 Ga. 449, 3 S. E. Rep. 269; Bank v. Cooper, 120 U. S. 778, 7 Sup. Ct. Rep. 777; Whittemore v. Bank, 134 U. S. 527, 10 Sup. Ct. Rep. 592; Bank v. Hall, 86 Me. 107, 29 Atl. Rep. 952; Bank v. Allen, 2 McCrary, 92; Grant v. Spokane Nat. Bk., 47 Fed. Rep. 673.

[22] Bank v. Cooper, 120 U. S. 778, 7 Sup. Ct. Rep. 777; Bank v. Overman, 22 Neb. 116, 34 N. W. Rep. 107; Pratt's Dig. N. B. Laws, 130, cases.

11. *Removal of Causes.*—Sec. 640, R. S. U. S., providing for removal of causes, expressly excepts from its provision banking corporations, and, therefore, even in the absence of the more recent legislation cited above restricting the jurisdiction of federal courts in suits by and against national banks, the bank would not have the right to remove a suit from a State to a federal court merely for the reason that it is a national bank.[23]

12. *A Receiver of a National Bank*, appointed by the comptroller of the currency, is an officer of the United States, and may sue in the federal courts; and if sued in the State courts, for a sum within the jurisdiction of the federal courts under the removal act, may remove the cause to the proper federal court.[24] But under the removal act, as it has been since the amendment of March 3d, 1887, as corrected by the Act of August 13th, 1888,[25] there is no right of removal by the receiver, whether in suits in equity or actions at law, unless the matter in dispute, exclusive of costs, amounts to $2,000.[26] However, a receiver appointed by the United States Circuit Court, when authorized to defend a suit affecting his trust, may remove the case into the court which appointed him, on the ground that such a suit is ancillary to the principal case in which the court has acquired jurisdiction and control of the assets.[27]

13. *The Jurisdiction in Suits by and against Receivers and other Officers of the United States*, referred to in section 12 of this article, is not exclusive, but, as necessarily follows from principles noted above, is merely permissive, and he may sue in the State courts; and if sued there, and does not exercise the right to remove the cause to the federal court, the right will be deemed to have been waived, and the jurisdiction will be complete.[28]

14. *It Necessarily Follows from the Law of his Creation*, and the source of his appointment and control, that the State courts cannot interfere with the receiver's administration of the trust by way of injunction, *mandamus*, etc., as the administration of winding up the affairs of the bank is all under the control of the federal legal machinery.[29]

15. *Receivership does not Preclude Suit against the Bank*, and claims may be presented and probated with the comptroller or receiver, or established—"adjudicated"—in any court of competent jurisdiction.[30] Even if disallowed by the receiver, the claim may be sued on and established in any court of competent jurisdiction.[31]

16. *The Receiver's Title* is merely such right and title as the bank itself had to the property held by the bank. His title is regarded as similar to an assignee in bankruptcy, or an assignee in insolvency; and it follows, as a mere corollary, that he acquires no title against the real owner of property held by the bank as a mere custodian, or as a bailment, such as special deposits, escrows, etc.[32]

17. *Attachments, Injunctions, etc., Prohibited.*—No attachment, injunction or execution shall be issued against a national bank association or its property before final judgment in any suit, action or proceeding in any State, county or municipal court.[33] Chief Justice Waite held that, although this provision was made to secure equality among creditors in the distribution of the assets of the bank, its operation is not confined to cases of actual or contemplated insolvency,

[23] 2 Morse on Banks, 1296, cases, note 34; Pettilon v. Noble, 7 Biss. 449, Blodgett, J.; Brown's Nat. Bk. Cases, 120.

[24] Thompson v. Schaetzel, 2 S. Dak. 395, 50 N. W. Rep. 631; Thompson v. Pool, 70 Fed. Rep. 725; Bolles' Nat. Bk. Act, secs. 245, 258, pp. 157 and 166; Pratt's Dig. N. B. Laws, 105, cases, and 167, cases; Hendee v. R. R. Co., 26 Fed. Rep. 677; Sowles v. Witters, 43 Fed. Rep. 700; Sowles v. Bank, 46 Fed. Rep. 513.

[25] See sec. 9 of this article.

[26] Hallam v. Tillinghast, 75 Fed. Rep. 849; Follett v. Tillinghast, 82 Fed. Rep. 241.

[27] Carpenter v. N. Pac. R. Co., 75 Fed. Rep. 850; Hallam v. Tillinghast, 75 Fed. Rep. 849.

[28] High on Receivers, sec. 363; Thompson v. Schaetzel, 2 S. Dak. 395, 50 N. W. Rep. 631; Bird's Executors v. Jockrem, 2 Wood, 232.

[29] R. S. U. S., sec. 5234-6 and 5242; Price v. Abbott, 17 Fed. Rep. 506; School Dist. v. Bank, 61 Fed. Rep. 417; Pratt's Dig. N. B. Laws, 129, citing Witters v. Foster, 28 Fed. Rep. 737; Bank v. Colby, 21 Wall. (U. S.) 609, Field, J.; Hendee v. R. R. Co., 26 Fed. Rep. 677; Armstrong v. Ettlesohn, 36 Fed. Rep. 209; Armstrong v. Troutman, 36 Fed. Rep. 275; McConville v. Gilmour, 36 Fed. Rep. 277; Fisher v. Yoder, 53 Fed. Rep. 565; Ocean Nat. Bk. v. Cool, 7 Hun, 237.

[30] R. S. U. S., sec. 5236; Bolles' N. B. Act, sec. 346, p. 205; Bank v. Pahquioque Bank, 14 Wall. 383; Thompson N. B. Cases, 77; Kennedy v. Gibson, 8 Wall. 498, 506, Swayne, J.

[31] Bank of Bethel v. Pahquioque Bank, 14 Wall. 383.

[32] High on Receiver (3d Ed.), sec. 559; Beach on Receiver (1891), secs. 456, 474; Corn Ex. Bank v. Blye, 101 N. Y. 303.

[33] R. S. U. S., sec. 5242, last clause; Pratt's Dig. N. B. Laws, 130.

but it is without such remedy as against national banks, so that it cannot be resorted to under any circumstances; that the effect of this provision is to write in all State attachment laws an exception, so that they must be read as if excepting national banks.[34] A contrary view is taken by Judge Danforth in a New York case,[35] where the question was fairly raised and squarely decided in what seems to have been a deliberate opinion and on a plausible theory of construction. While this case is not referred to in the opinion in Bank v. Mixter, *supra*, the clear and emphatic language of Chief Justice Waite in that case certainly overrules all such holdings as the New York case under consideration.

Conclusion.—From the foregoing I conclude:

1. That the federal courts have exclusive jurisdiction, under the National Bank Act, only in suits by the bank to enjoin the comptroller of the currency from placing the bank in the hands of a receiver, and in suits by the comptroller of the currency in the nature of *quo warranto* for a forfeiture of the bank's franchise.

2. That a receiver of a national bank, appointed by the comptroller of the currency, is regarded as an officer of the United States, and may bring an action relating to enforcing his trust in the federal court; and if an action is brought against him in the State courts relating to his trust, he may remove the same to the federal courts, provided, in either case, that the amount involved, exclusive of costs, is such as to bring it within the jurisdiction of the federal courts under the law in force, now $2,000.

3. That, except as stated above, the federal courts, under the law as it now exists, have jurisdiction by and against national banks only where they would have jurisdiction in suits by or against other banking corporations under like circumstances.

4. That, subject to the rights of the receiver to remove the cause to the federal courts, as stated above, and subject to the qualification that the State courts cannot interfere with the administration of the receivership, State courts have jurisdiction of suits by and against the receiver of a national bank, the same as in any other case.

5. That anyone having a claim against the bank may, at his option, present it to the receiver or comptroller, and make proof thereof as in other similar cases of the receiver of an insolvent concern; or may, in the first place, bring suit on it in any court of competent jurisdiction, either against the bank, or the bank and the receiver jointly; or he may first present it to the receiver, and if disallowed may treat the disallowance merely as refusal to pay it, and may then maintain his action thereon in any court of competent jurisdiction, the same as if it had not been probated before the receiver.

Chicago, Ill. FRANK W. BABCOCK.

[34] Pratt's Dig. N. B. Laws, 130; Bank v. Mixter (4 cases), 124 U. S. 721, Waite, C. J.; Bank v. Colby, 21 Wall. 609, 612, Field, J.

[35] Robinson v. Bank, 81 N. Y. 385, 392, *et seq*,

BOYCOTT — CONSPIRACY — ASSOCIATIONS — EVIDENCE—DAMAGES.

BOUTWELL v. MARR.

Supreme Court of Vermont, February 15, 1899.

1. A granite manufacturers' association, embracing 95 per cent. of all the granite manufacturers in the place, adopted a resolution that no trade should be conducted with any person, firm or corporation engaged in cutting, quarrying or polishing granite in the State who should not be members of the association. The by-laws imposed a $50 fine for the violation of the rules of the association. The result was to practically kill the polishing business of plaintiffs, who were not members, which was the real object of the resolution, so as to compel plaintiffs to join the association. Held, that the members of the association are liable to plaintiffs for the actual damages caused to their business, notwithstanding they did not try to influence persons outside of the association.

2. The voluntary acceptance of by-laws by members of an association, providing for the imposition of coercive fines for the violation of the association's rules, does not remove the fact of their coerciveness.

3. In an action for damages for a conspiracy to boycott plaintiffs' mill, evidence that defendants individually expressed a purpose to continue to patronize the mill, in connection with evidence that they did so until the association of which they were members boycotted the mill, is admissible to characterize the reason for the withdrawal of their patronage.

4. Evidence tending to show the purpose and use of the association, and its coercive character against its own members, was admissible.

5. Statements of defendant members of an association, indicative of their purpose, and of members not defendants as to the effect of a vote of the association forbidding members to do business with persons not members, are admissible in a boycott case, where made contemporaneously with and in explanation of their action after and under the vote.

6. Exemplary damages are not recoverable against several defendants unless all are shown to have been moved by a wanton desire to injure.

MUNSON, J.: On the 6th day of June, 1893, the plaintiffs obtained a bond for the conveyance of a mill in Barre, equipped with machinery for polishing granite; and on the 16th day of the month they received a deed, and took possession of the property, and became co-partners, under the name of the Boutwell Polishing Company. The mill had been operated for several years by the plaintiffs' grantor; and, in the interval between the taking of the bond and the receipt of the deed, the plaintiffs saw the patrons of the mill, and received assurances of a continuance of their custom, limited in the case of some patrons by the mention of an expectation or a possibility of their putting in polishing machines of their own. From the time of their purchase until November the work of the mill averaged over $1,000 a month, that of the last month being but little below that amount. In November the receipts were some less than $200. In December and January the mill was without work, and substantially all that it did after that was upon stock purchased by the company from parties outside of Barre. On the 19th of April, 1894, the mill was sold to one of the defendants. No complaint was ever made of the plaintiffs' work or their methods of buisness. During this time there was an organization in Barre called the "Granite Manufacturers' Association," which embraced about 95 per cent. of all the granite manufacturers in the place. There was also an organization located at Boston, called the "Granite Manufacturers' Association of New England," with which were connected the local organization of the New England States, including that at Barre. All the defendants held by the verdict were members of the Barre association. Neither the plaintiffs' firm nor any of its members were connected with this or any similar organization. Prior to November, 1893, the Barre association adopted by-laws, which prohibited dealings with members not in good standing, and imposed fines for the violation of its rules. On the 10th of November the association indorsed a resolution previously adopted by the New England Association, which recommended that none of its members sell any rough stock, partly finished or finished granite, directly or indirectly, to any firm, individual, or corporation engaged in cutting, quarrying, or polishing granite in any of the New England States or in New York City, and not a member of the association. On the 24th of November the association adopted a resolution of the following term: "Resolved, for the purpose of strengthening the association, and (for) the mutual protection of its members, (that) no trade shall be conducted with any individual, firm, or corporation engaging in cutting, quarrying, or polishing granite in the State of Vermont who are not members of this association."

George Lampson, a defendant, testified that he assisted in the formation of both associations, and had been connected with them ever since; that he was notified by a circular of the action taken November 10th; that the effect of that resolution would be that, if a company declined to join the association, no member of the association would thereafter do any business with it. Alexander Gorden, another defendant, testified that he understood that the main reason for the collapse of the plaintiffs' business was the passage of the resolution; that he voted for it, and did so believing that it would have that effect on their business; that after its passage, he stopped sending work to the plaintiffs; and that he did so because of that vote. It appears from the testimony of some of the defendants that during the summer and early fall of 1893 they had several conversations with John W. Dillion, the manager of the plaintiffs' business, in regard to their becoming members of the association, in which they expressed a desire to have them join. Mr. Kemp, one of the plaintiffs, testified that some time in November, and after the loss of their business, defendant Kelliher asked him why they would not join the association, and said they would find out that they would have to join it before they could do any business. Mr. Senter, an attorney for the plaintiffs, testified that, in December, defendant Eagan, on coming out from an interview with the plaintiffs, said to him that "they would find out they couldn't do any polishing business until they joined the association." Mr. Kemp further testified that in January, 1894, he had two interviews with certain defendants, at their suggestion, in which the question of plaintiffs' joining the association was discussed at length. His testimony tended to show that the first of these meetings was with defendants Ady and Gordon, and that Ady remarked that the object of the interview was to see if they could induce the plaintiffs to join the association, but that they hardly expected to get them to, as they supposed plaintiffs were still stubborn about joining; that later in the conversation he used substantially these words, "I will admit that the effect of that resolution was to destroy the business of your company in one day, but it is my opinion that, if you will join the association, you can get your business all back in one day;" and that Gordon, on being appealed to by Ady, affirmed his statement; that the second of these interviews was with the defendant J. D. Smith, who said it was true that the action of the association had had the effect to close plaintiffs' mill, but that he was perfectly confident that it could be started up, with all their old customers, at once, if they would join the association.

The defendants have not brought up their exceptions to the charge, but stand on their motion that a verdict be directed for want of sufficient evidence to make them liable. There was clearly evidence tending to show that the defendants undertook to compel the plaintiffs to join the association by depriving their mill of work, and that they made use of their organization as a means of concerted action to accomplish their purpose. But there was no evidence

tending to show that the defendants made any attempt to compel persons, not members of the association, to withhold their patronage, and they insist that they cannot be made liable for simply withholding their own.

The crime of conspiracy consists in a combination of two or more persons to effect an illegal purpose, either by legal or illegal means, or to effect a legal purpose by illegal means. State v. Stewart, 59 Vt. 273, 9 Atl. Rep. 559. But the grounds of recovery in a civil suit are not identical with the elements of the crime. The law punishes the mere agreement to effect an illegal purpose or to use illegal means. But it is clear that a civil action cannot be sustained unless something causing damage to the plaintiff had been done in furtherance of the agreement; and it is claimed to be also requisite that the thing done be something unlawful in itself. This would preclude a reliance upon the existence of an illegal purpose, and require that the means used be illegal. The agreeing together to effect an illegal purpose being itself illegal, it might seem that any act done in furtherance of the agreement, and resulting in damage, even though not itself a violation of right, would sustain a recovery. But the view suggested is not sustained by the authorities, and we proceed with our inquiry upon the assumption that there can be no recovery unless illegal means were employed.

It is clear that every one has a right to withdraw his own patronage when he pleases, but it is equally clear that he has no right to employ threats or intimidation to divert the patronage of another. If it be true as a general proposition that several may lawfully unite in doing to another's injury, even for the accomplishment of an unlawful purpose, whatever each has a right to do individually, it by no means follows that the combination may not be so brought about as to make its united action an unlawful means. The defendants insist that, as members of the association, they had a right to resolve to keep their work among themselves, and that, in the absence of anything tending to show an attempt on their part to influence the action of others, they cannot be held liable. It may be true that if the defendants, acting independently of any organization, and moved solely by similarity of interest and views, had united in withdrawing their patronage, the effect upon the plaintiffs' business would have been the same, and yet the defendants have incurred no liability. But, in the case supposed, the united action would result from the free exercise of individual choice. It will be seen upon further inquiry that this cannot be said of the action of an organization like that operated by the defendants.

It is true, as suggested in argument, that every one engaged in business is liable to have it injured or destroyed by the action of those upon whom he depends for patronage. But, when those upon whom he depends for patronage are acting as individuals, he has a measure of security in the probability that different preferences will be shown by persons left to their own choice; and, if some who desire to injure his business secure the co-operation of others by unlawful means, the law gives him a remedy. If the defendants are right, he can be deprived of this security and this remedy by converting those who desire his injury into the majority of an association, and those who do not into a suppressed minority, held to the designated course by the pressure of a system of fines and penalties. But giving a new face to an old wrong can never defeat the remedy, for the law will inquire as to the substance of the thing complained of. If the plaintiffs were in fact injured by a forced withdrawal of patronage secured through the action of defendants' organization, they are entitled to redress. Without undertaking to designate with precision the lawful limit of organized effort, it may safely be affirmed that when the will of the majority of an organized body, in matters involving the rights of outside parties, is enforced upon its members by means of fines and penalties, the situation is essentially the same as when unity of action is secured among unorganized individuals by threats or intimidation. The withdrawal of patronage by concerted action, if legal in itself, becomes illegal when the concert of action is procured by coercion. In this case it could easily be found that a fine of $50 for a violation of the rules was not intended to be applied to rules adopted to secure a performance of the ordinary duties of membership. If in fact designed to hold unwilling members to unity of action in an aggressive movement of unlawful character, the defendants cannot complain if the law so treats it. The jury could properly infer from the nature and management of the defendants' organization that their united action was due in part to the means adopted to secure it. The force of the measure resolved upon lay partly in the fact that the by-laws threatened penalties against any who should fail in carrying it into effect.

The fact that the members of the association voluntarily assumed its obligations in the first instance, so far as it is a fact, is not controlling. The law cannot be compelled by any initial agreement of an associate member to treat him as one having no choice but that of the majority, nor as a willing participant in whatever action may be taken. The voluntary acceptance of by-laws providing for the imposition of coercive fines does not make them legal and collectible, and the standing threat of their imposition may properly be classed with the ordinary threats of suits upon groundless claims. The fact that the relations and processes deemed essential to a recovery are brought within the membership and proceedings of an organized body cannot change the result. The law sees in membership of an association of this character both the authors of its coercive system and the victims of its unlawful pressure. If this were not so, men could deprive their fellows of established

rights, and evade the duty of compensation, simply by working through an association. But it can hardly be supposed that the defendants' organization reached its present proportions without some previous use of the methods disclosed by the evidence above cited; and, as far as its membership was due to coercion, there was a further element of unlawful pressure in the enforcement of the united action against the plaintiffs. It would be strange, indeed, if the members of an association organized upon such a basis, and advanced by such means, could meet a claim of this nature by saying that they had made no attempt to secure the co-operation of outside parties. It is clear that if the association had comprised but a small portion of the manufacturers, and had destroyed the plaintiffs' business by compelling the manufacturers to join them in withholding patronage, its members would have been liable. But it is claimed, in effect, that a business can be destroyed with impunity when the organization has become so extensive that there are no outside patrons to control, or so few that their course is a matter of no moment. Upon this theory, every successful instance of coercion would increase the safety with which another coercion could be attempted, and, when coercion had been pursued until but one contumacious person remained, immunity would be complete. It is clear that the law cannot concede to organizations of this character the powers and immunities claimed for their association by these defendants, and retain its own power to protect the individual citizen in the free enjoyment of his capital or labor.

The evidence excepted to was properly admitted. Evidence that the defendants individually expressed a purpose to continue to patronize the mill, in connection with evidence that they did so without complaint until the general withdrawal, was evidence tending to characterize the withdrawal when made. The items offered as showing the profit of the mill tended to establish the damages according to the rule adopted by the court, and no question is now made as to the correctness of that rule. Evidence of the existence and rules of the New England association was admissible because of the connection of that body with the local organization. The resolution and by-laws of the Barre association, the agreement of that association with the Boston Wholesalers' Association in restriction of the sales of its members, the appointment of a committee to inquire as to violations of its rules, the official correspondence had with one of its members upon that subject, the fact that a fine was imposed for an ascertained violation, and the action of the association in assuming the defense of its secretary when sued because of a letter written in respect to an alleged violation, were all admissible as showing the purpose and use of the organizations, and its coercive character as against it own members. The statements of different defendants indicative of their purpose, and of members of the association not defendants as to the force and effect of the vote, made contemporaneously with and in explanation of their action under it, were clearly admissible.

The case stands upon grounds which are inconsistent with the allowance of exemplary damages; for damages of this nature, if ever recoverable against several defendants, are recoverable only where all are shown to have been moved by a wanton desire to injure. The exemplary damages were separated by a special verdict, but were included in the judgment rendered. Judgment reversed, and judgment for actual damages, with interest from date of judgment below.

NOTE.—*Recent Cases on the Subject of Combinations and Conspiracies in the Nature of Boycott.*—Where employees enter into a lawful combination to control, by artificial means, the supply of labor, preparatory to a demand for an advance of wages, a combination of employers to resist such artificial advance is lawful, since it is not made to lower the price of labor, as regulated by supply and demand. Cote v. Murphy, 159 Pa. St. 420, 20 Atl. Rep. 190. A combination of employers prevented dealers in supplies used by such employers from selling to an employer who was not a member of their combination, and who had conceded a demand of the employees, by informing such dealers that no member of the combination would buy from them if they sold to such employer. Held, that this was not unlawful coercion. Cote v. Murphy (Pa. Sup.), 159 Pa. St. 420, 33 W. N. C. 421, 28 Atl. Rep. 190. Evidence that employers in the building trades combined to resist a lawful combination of employees to advance wages, agreed among themselves not to sell materials to contractors who conceded the demand, and refused to furnish material to the plaintiff contractor, or to work for him, because he was paying the demanded wages, and that a member of such employers' combination broke his contract with plaintiff to deliver materials, was insufficient to show a conspiracy by such employers to injure plaintiff in his business. Buchanan v. Kerr, 159 Pa. St. 433, 33 W. N. C. 421, 28 Atl. Rep. 195. A large number of retail lumber dealers formed a voluntary association, agreeing that they would not deal with any manufacturer or wholesaler who should sell directly to consumers at any point where a member of the association was retailing, and that, whenever any wholesaler or manufacturer made such sale, their secretary should notify all the members. Plaintiff having made such a sale, the secretary threatened to send such notice. Held not actionable, nor ground for an injunction. Bohn Manuf'g Co. v. Hollis (Minn.), 54 Minn. 223, 55 N. W. Rep. 1119. A petition alleging that defendants (wholesale lumber dealers) formed an association agreeing not to sell to others than dealers; that, because of a refusal by plaintiff (another dealer) to join such association, they had maliciously distributed circulars asking that patronage be withdrawn from plaintiff till he agreed not to sell to others than dealers, thereby influencing others not to deal with plaintiff, to his injury,—states a good cause of action. Olive v. Van Patten (Tex. Civ. App.), 25 S. W. Rep. 428. "The Retail Lumber Dealers' Association of Indiana" by its by-laws gave an active member a claim against a wholesaler for selling to a person not a "regular dealer" in such member's community, provided for a hearing of the claim by a committee, and required members to refuse to

patronize a wholesaler who ignored the committee's decision. Plaintiff, who was not a "regular dealer," underbid defendant on a contract, but wholesalers refused to sell to him, and he was obliged to abandon the contract, because defendant, an active member of the association, had previously enforced a claim against a wholesaler who had sold to plaintiff, and expressed an intention of continuing to enforce such claims. Held, that defendant was liable for the amount which plaintiff lost by abandoning his contract, and would be perpetually enjoined from making a claim under the by-laws of the association against any person who sold to plaintiff. Jackson v. Stanfield (Ind. Sup.), 36 N. E. Rep. 345. Wholesale butchers to protect each other from dishonest and insolvent customers, and otherwise naturally to assist each other, may agree that each, on the request of the other, will refuse to sell merchandise to any butcher indebted to them both, and such butcher cannot recover for consequent injury to his business. Delz v. Winfree (Tex. Civ. App.), 25 S. W. Rep. 50. A "strike" is not illegal *per se*. Longshore Printing & Pub. Co. v. Howell (Oreg.), 38 Pac. Rep. 547. A combination among employees, having for its object their orderly withdrawal, in a body, from the service of their employers, on account of a reduction in their wages, is not, as a matter of law, a "strike," within the meaning of that word as commonly used. Such a withdrawal, though amounting to a strike, is not illegal. Arthur v. Oakes (C. C. A.), 11 C. C. A. 209, 63 Fed. Rep. 310. A combination by employees to compel their employers, by threats of quitting and by actually quitting their service, to withdraw from a mutually profitable relation with a third person having no effect on the character or reward of the employees' services, for the purpose of injuring such third person, is a boycott, and an unlawful conspiracy. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. (C. C.), 62 Fed. Rep. 803. A combination for the purpose of compelling railway companies to break their contracts with the owner of certain cars, for the use thereof by them, is an unlawful conspiracy. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. (C. C.), 62 Fed. Rep. 803. An association of fire underwriters, for the regulation of premiums, the prevention of rebates, the compensation of agents, and non-intercourse with companies not members, is not an illegal conspiracy. Continental Ins. Co. v. Board of Fire Underwriters of the Pacific (C. C.), 67 Fed. Rep. 310. In consequence of a dispute with reference to an alleged preferential employment of non union men by a building firm, a trade union published a poster headed, "Trollope's Black List," containing the names of non-union men employed by the firm. Held that, the trade union having done more than was in fact necessary for their own protection, an interlocutory injunction was properly granted. Trollope v. London Building Trades' Federation, 72 Law T. 342. A "boycott" by the members of trades unions or assemblies (which term, in law, implies a combination to inaugurate and maintain a general prescription of articles manufactured by the party against whom it is directed) is unlawful, and may be enjoined by a court of equity. Oxley Stave Co. v. Coopers' International Union of North America (C. C.), 72 Fed. Rep. 695. A conspiracy to prevent the loading or unloading of a vessel, except by such labor as may be acceptable to defendants, may be enjoined, though no particular overt act against that particular vessel is alleged or proved. Elder v. Whitesides (C. C.), 72 Fed. Rep. 724. A court of equity may interfere by injunction to prevent persons from attempting by intimidation, threats of personal violence, and other unlawful means, to force employees to quit work and join in a "strike." Hamilton-Brown Shoe Co. v. Saxey, 131 Mo. 212, 32 S. W. Rep. 1106. It is no ground for refusing an injunction to restrain conspirators from doing irreparable damage to complainant's property rights that some of the acts enjoined would subject the wrongdoers to a criminal prosecution. Elder v. Whitesides (C. C.), 72 Fed. Rep. 724. While equity will never interfere by injunction to prevent the commission of a crime, it may enjoin an act which threatens irreparable injury to the property of an individual, though such act may also be a violation of a criminal law. Hamilton-Brown Shoe Co. v. Saxey, 131 Mo. 212, 32 S. W. Rep. 1106. An injunction will be granted where members of labor organizations conspire unlawfully to interfere with the management of the business of a corporation, and to compel the adoption of a particular scale of wages, by congregating riotously and in large numbers, at and near the works of the corporation, for the purpose of preventing persons not members of said organizations from entering the employ of the corporation or remaining therein, by intimidation, consisting in physical force, or injury, actual or threatened, to person or property. Consolidated Steel & Wire Co. v. Murray (C. C.), 80 Fed. Rep. 811. The maintenance of a patrol of two men in front of plaintiff's premises, in furtherance of a conspiracy to prevent, either by threats and intimidation, or by persuasion and social pressure, any workmen from entering into, or continuing in, his employment, will be enjoined, though such workmen are not under contract to work for plaintiff. Vegelahn v. Gunter (Mass.), 167 Mass. 92, 35 L. R. A. 722, 44 N. E. Rep. 1077. The owner of a mine is entitled to the aid of the courts to protect him, against the unlawful interference of others, in the continued enjoyment of the right to operate his mine, the right to employ the labor of those willing to work, and his right to the use of the highway leading to his mine, for himself and his employees. Mackall v. Ratchford, 82 Fed. Rep. 41.

BOOK REVIEWS.

AMERICAN STATE REPORTS, VOL. 62.

This volume contains many important cases. The case of St. Louis, etc. Ry. Co. v. Paul, decided by the Supreme Court of Arkansas, is an interesting case on the subject of the protection of corporations from special and hostile legislation. Appended to this case is a very exhaustive note by Mr. Freeman, wherein he reviews the constitutional questions growing out of the main question. Another case worthy of mention is San Diego Water Co. v. City of San Diego, decided by the Supreme Court of California, containing a somewhat similar question of constitutional law as was involved in the leading case of Munn v. Illinois, viz., the power of courts to review the fixing of rates by public corporations. Following this case is a long note, wherein is interestingly reviewed the evolution of the doctrine growing out of the case of Munn v. Illinois. Buck v. Miller, decided by the Supreme Court of Indiana, contains a valuable note on the *situs* of personal property for the purpose of taxation. Pittsburg, etc. Ry. Co. v. Mahoney, another Indiana case, has an extensive annotation treating of the relations of express companies and their employees to other common carriers. This valuable series of reports is published by the Bancroft-Whitney Company, San Francisco, Cal.

PATTISON'S COMPLETE MISSOURI DIGEST, VOL. 3.

At the time of their appearance we made mention and gave our enthusiastic indorsement of the plan and character of the first two volumes of this series of Missouri Digests. Of the third volume, just from the press and before us, the same may be said. It is in every respect, accurate, comprehensive and satisfactory. Its statements of the propositions of law decided in the various cases, are well prepared and sufficiently full and complete. The manner in which the author has inserted heads and subheads is without any criticism. As to the need of a complete digest of the Missouri cases we have heretofore spoken, and practitioners all over the State will undoubtedly welcome this present series of digests as a great labor-saving work if nothing else. The manner of its preparation by Mr. Pattison is to be commended in every particular. It is a complete digest of Missouri Reports, embracing Vols. 1 to 137 of the Supreme Court Reports, and Vols. 1 to 69 of the reports of the courts of appeal. One more volume is yet to appear. We are informed that it will shortly be out of press. Published by the Gilbert Book Company, St. Louis, Mo.

BOOKS RECEIVED.

A Philosophical History of the Formation of the American Republic, from its Beginning to the End of the Civil War. By Robt. Kissick, LL.B., of the Oskaloosa, Iowa, Bar.

The Federal Courts, their Organization, Jurisdiction and Procedure. Second Edition, with Appendix on Bankruptcy Jurisdiction and Practice. By Charles H. Simonton, United States Circuit Judge. Richmond, Va.: B. F. Johnson Publishing Co., 1898.

A Magistrate's Manual (Third and Revised Edition), Containing Forms in Civil and Criminal Proceedings, under the Code of West Virginia, for Justices of the Peace, Constables, etc., and Formulæ for Certificates of Acknowledgments, Deeds, Bills of Sale, Power of Attorney, Notices, Depositions, Wills, etc. By Marcellus M. Thompson, of the Clarksburg Bar. Wheeling: The West Virginia Printing Co., 1898. Price, $2.00.

The Annotated Corporation Laws of all the States Generally Applicable to Stock Corporations, Including Statutes and Constitutional Provisions Relating to Receivers, Practice, Taxation, Trusts and Combinations, Labor, and Crimes by Corporations and their Officers. In Three Volumes. Complied and Edited by Robert C. Cumming, Frank B. Gilbert and Henry L. Woodward, of the Albany, N. Y., Bar. Albany: J. B. Lyon Company, Publishers. 1899.

The Law of Real Property, being a Complete Compendium of Real Estate Law, Embracing all Current Case Law, Carefully Selected, Thoroughly Annotated and Accurately Epitomized, Comparative Statutory Construction of the Laws of the Several States, and Exhaustive Treatises upon the most Important Branches of the Law of Real Property. Edited by Tilghman E. Ballard, Emerson E. Ballard, Authors of "Ballards' Real Estate Statutes of Indiana," "Ballards' Real Estate Statutes of Kentucky," "Ballards' Ohio Law of Real Property," and Editors, with Mr. Thornton, of "Thornton & Ballards' Annotated Indiana Practice Code." Vol. 5. Logansport, Ind.: The Ballard Publishing Co.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACTION AGAINST EXECUTRIX—Misappropriation of Corporate Funds.—A bill to compel the estate of a deceased president of a corporation to make good the amount of misappropriation by him of the corporation's property, being for indemnity, and not for restitution, may be maintained against his executrix, though no assets of the corporation come to her hands. —WINEBURGH V. UNITED STATES STEAM & STREET RAILWAY ADVERTISING CO., Mass., 53 N. E. Rep. 145.

2. ACTION ON CHECK—Failure to Pay.—Proof by the drawer of a check that, when such check was presented, the drawer had with the drawee, subject to check, a sufficient deposit wherewith to pay such check, and that, subsequently, the drawer was compelled to pay the amount of the check to the holder thereof, because the drawee unwarrantedly refused payment thereof, is sufficient proof to sustain a judgment for damages to the amount of the payment so made by the drawer, and such other damages as are alleged and proved.—FIRST NAT. BANK OF GREENWOOD V. RAILSBACK, Neb., 78 N. W. Rep. 573.

3. ADMINISTRATION—Administrator's Bond—Validity. —To constitute a valid administrator's bond, some person or officer must be named therein as obligee.—TIDBALL V. YOUNG, Neb., 78 N. W. Rep. 507.

4. ADVERSE POSSESSION—Limitations.—A possession of land for over 20 years under a chain of title makes the possessor the owner of the property, under the

limitation laws, so that he may maintain ejectment, though he is not able to show a chain of title from the government.—SANITARY DIST. OF CHICAGO v. ALLEN, Ill., 53 N. E. Rep. 109.

5. ATTACHMENT—Affidavit.—Where the averment, in an affidavit for attachment before a justice of the peace, that the property about to be attached is not exempt from execution, is traversed by the affidavit of defendant, and it is shown circumstantially by such affidavit that the property is exempt, the burden is on the plaintiff to maintain the truth of the statement by other evidence, and, where no such additional evidence is offered, the attachment should be discharged. —KIRK v. STEVENSON, Ohio, 53 N. E. Rep. 49.

6. ATTACHMENT—Grounds.—A mortgagee of chattels upon which an order of attachment has been levied cannot question the existence of the grounds for the issuance of the writ. To the attaching debtor alone belongs that right.—MEYER v. KEEFER, Neb., 78 N. W. Rep. 506.

7. BANKRUPTCY—Exemptions—Partnership Assets.—In Georgia, in case of the bankruptcy of a firm, a partner who has no individual property is entitled to exemptions out of the partnership assets, provided he has an interest in such assets to the amount and extent of the exemption claimed, although the firm property is not sufficient to pay the firm debts.—IN RE CAMP, U. S. D. C., N. D. (Ga.), 91 Fed. Rep. 745.

8. BANKRUPTCY—State Insolvency Law.—A voluntary general assignment for the benefit of creditors, made under a State insolvency law after the enactment of the national bankruptcy law, is an act of bankruptcy, contrary to the spirit of the bankruptcy act and to public policy as manifested therein, and, as against proceedings in bankruptcy subsequently instituted against the assignor, is void; and proceedings had in a State court upon such assignment, in accordance with the State law, are *coram non judice*, and do not prevent the court of bankruptcy, upon a proper petition against the assignor, from adjudging him bankrupt, and proceeding to the administration and distribution of his estate.—IN RE CURTIS, U. S. D. C., S. D. (Ill.), 91 Fed. Rep. 737.

9. BENEFICIAL CORPORATION—Benefit Certificates.—A beneficial corporation whose charter provides that its particular business shall be to afford material aid to its members and their dependents, by establishing a fund for the relief of sick and distressed members, and a benefit fund, from which, on the death of a member, a sum not exceeding $5,000 shall be paid to the family or dependents of such member, is not authorized to issue a benefit certificate providing for payment to one not dependent upon such deceased member.—SUPREME COUNCIL CATHOLIC BENEV. LEGION v. MCGINNESS, Ohio, 53 N. E. Rep. 54.

10. BILLS AND NOTES—Consideration—Land Contract. —A land contract is not necessarily void because of a lease on the land, as it may not prevent performance thereof; so that a note given by plaintiff to defendant as part payment cannot be said to be without consideration till plaintiff shows himself entitled to refuse to carry out the contract.—ENGLISH v. YORE, Mich., 78 N. W. Rep. 476.

11. BILLS AND NOTES—Indorsement in Blank.—The blank indorsement of a note transfers the legal title to the holder, and invests in him an absolute right of action, which is unaffected by any equities existing between him and his indorser.—ILLINOIS CONFERENCE OF EVANGELICAL ASSN. OF NORTH AMERICA v. PLAGGE, Ill., 53 N. E. Rep. 76.

12. BILLS AND NOTES—Defense—Consideration.—Repeated promises to pay do not prevent the maker from insisting that there was no consideration for his note. —OLDACRE v. STUART, Ala., 25 South. Rep. 38.

13. BILLS AND NOTES—Guaranty—Set-off.—Where notes sought to be set off against an assigned debt were alleged to have been acquired through a contract of guaranty, and it develops that the guaranty was a fictitious scheme, designed as a defense, equity will not enforce it, notwithstanding the pretended guarantor had a meritorious defense as holder of the notes.—UNION NAT. BANK OF CHICAGO v. HINES, Ill., 53 N. E. Rep. 83.

14. BILLS AND NOTES—Successive Indorsers.—One who made a note payable to his own order requested defendant to indorse it so that he could get it discounted, and informed him that it would be necessary to have two indorsers, and that he would get the plaintiff to indorse it. Defendant thereupon indorsed the note, on the maker's agreement that it would be shown to him with the plaintiff's indorsement before being discounted, which was done, after plaintiff had signed under defendant without notice of the agreement. The maker's own indorsement was on the note when discounted, but when it was made was uncertain. Held, that plaintiff and defendant were, as to each other, successive indorsers.—LEWIS v. MONAHAN, Mass., 53 N. E. Rep. 150.

15. BOUNDARIES—Establishment by Agreement.—On an issue as to whether a certain boundary line had been established by agreement, an instruction "that acquiescence in a line, without an agreement as to its correctness, does not bind a party," unless extending for more than 20 years, is not misleading as tending to tell the jury that parties could not settle a disputed line without an agreement that it was the correct line. —HENDERSON v. DENNIS, Ill., 53 N. E. Rep. 65.

16. BROKERS—Discretion —Where a broker, claiming general discretionary power to make purchases for a customer, gives evidence of a proper exercise of that discretion in a purchase of corporate bonds, the customer may show that the bonds are behind $90,000,000 of corporate indebtedness.—HOPKINS v. CLARK, N. Y., 53 N. E. Rep. 27.

17. CARRIERS—Passenger—Obstructions on Platform. —Where a passenger has procured a ticket, she has a right to presume, in using the platform to go to the train, that it is a safe place; and an instruction based upon the theory that the platform of a railroad station is a place of known danger is properly refused.—AYRES v. DELAWARE, L. & W. R. CO., N. Y., 53 N. E. Rep. 22.

18. CARRIERS—Passengers—Rules.—One coming to a railroad station to take the next train becomes, in contemplation of law, a passenger, provided his coming is within a reasonable time before the time for departure of said train, whether or not he has purchased a ticket.—PHILLIPS v. SOUTHERN RY. CO., N. Car., 32 S. E. Rep. 388.

19. CARRIER OF GOODS—Loss of Freight—Evidence.—The bill of lading and waybill, made by the authorized agent of a common carrier of freight, are competent evidence tending to prove that the articles therein described were delivered to such carrier for shipment.—CHICAGO, M. & ST. P. RY. CO. v. JOHNSTON, Neb., 78 N. W. Rep. 499.

20. CARRIER OF GOODS—Rates—Interstate Shipments. —The agent of the railroad company at the destination of an interstate shipment by connecting carriers may and must collect from the shipper the excess of the tariff rates fixed by the interstate commerce commission over the rate agreed on with the first carrier.—SAN ANTONIO & A. P. RY. CO. v. CLEMENTS, Tex., 49 S. W. Rep. 913.

21. CHATTEL MORTGAGE—Agreement for Chattel Mortgage.—An unrecorded agreement to give a chattel mortgage stands no better, as against a purchaser of goods, than an unrecorded mortgage, which Pub. St. ch. 192, § 1, declares void as against any person other than the parties thereto, where the chattels remain in the possession of the mortgagor.—SMITH v. HOWARD, Mass., 53 N. E. Rep. 142.

22. CHATTEL MORTGAGES—Bona Fide Purchasers.—A *bona fide* subpurchaser of chattels takes free from the lien of an unrecorded mortgage, though the first purchaser had notice.—JOHN CAPTREE CO. v. BEAUCHAMP, Mont., 56 Pac. Rep. 278.

23. CONSTITUTIONAL LAW — Gift of Public Moneys—Exempt Firemen's Relief Fund.—St. 1895, p. 107, which requires every municipal corporation in which an exempt fire company exists to annually set apart a sum to be devoted to the relief of disabled exempt firemen residing therein, without restricting the benefits to such as have performed service in the particular municipality providing the fund, is contrary to Const. art. 4, §§ 31, 32, which prohibit the legislature from making or authorizing a gift of public moneys.—TAYLOR v. MOTT, Cal., 56 Pac. Rep. 256.

24. CONSTITUTIONAL LAW—Unlawful Discrimination.—Laws 1889, ch. 385, which provides that every union adopting a label to designate the products of the labor of its members may, by filing a copy of the label in the office of the secretary of state, obtain the right to enjoin the use, counterfeit, or imitation of such label, is not a local or a private act.—PERKINS v. HEERT, N. Y., 53 N. E. Rep. 18.

25. CONTRACT.—Where a written contract provided that one party was to furnish and erect an engine in the other's building, but the engine failed to work satisfactorily, because placed on an insufficient foundation, in an action for the price, evidence is admissible that, at the time of the making of the contract, the second party admitted that it was his duty to provide a proper place; such evidence not varying or contradicting the terms of the contract.—KUMBERGER v. CONGRESS SPRING CO., N. Y., 53 N. E. Rep. 3.

26. CONTRACTS — Actions—Damages.—Where a contract is terminated with a party's consent, his right to recovery is limited to the contract price, and the amount recoverable depends on the ratio of the value of the labor and materials furnished to the total cost of the work completed according to the contract.—CONNOLLY v. SULLIVAN, Mass., 53 N. E. Rep. 143.

27. CONTRACT — Certainty.—There is nothing fatally uncertain about a contract by which plaintiff agrees to turn over to defendants his interest in carpet-sweeper inventions, and to continue to use his best efforts to make further improvements thereon, and to turn them over to them, they in return to pay $20 a week to him, or, in case of his death, to his wife, this to continue as long as they continue the use of his devices.—RAYMOND v. WHITE, Mich., 78 N. W. Rep. 469.

28. CONTRACT — Construction.—A contract between an owner of an opera house and a manager of an opera company, providing that the opera company should receive a fixed sum and 85 per cent. of all moneys received in the sale of seats, does not mean that the percentage should be computed only on the amount of the receipts in excess of the fixed sum, but entitles the company to such sum and a percentage of the gross receipts.—MING v. PRATT, Mont., 56 Pac. Rep. 279.

29. CONTRACT—Contradiction by Oral Testimony.—An understanding, at the time plaintiff gave defendant bank a note, that it would renew it till business should improve, contradicts the promise in the note to pay on maturity; so that, not being in writing, it cannot be proved, even in equity, in suit for specific performance thereof, there being no fraud other than that of relying on the principle of law against such contradiction.—HALL v. FIRST NAT. BANK OF CHELSEA, Mass., 53 N. E. Rep. 154.

30. CONTRACT — Evidence.—In an action to recover under a contract under which defendant agreed to cut all timber on certain land suitable for railroad ties, under a penalty for each tie which might have been cut out of trees left standing, evidence of a witness, having special knowledge as to trees suitable for ties, as to the number of ties in the trees remaining on said land which should have been cut by defendant, is admissible.—THORNTON v. SAVAGE, Ala., 25 South. Rep. 27.

31. CONTRACT — Restraint of Trade — Validity.—An agreement not to engage in business "within a radius of 10 miles in either direction" of a certain point, under penalty of $2,000 liquidated damages, though void as to the part of the territory in a county outside that in which is the central point (Civ. Code, § 1674, allowing the restriction only as to "a specified county, city, or a part thereof"), described with sufficient definiteness the territory within the county embracing the central point, and is valid as to it.—FRANZ v. BIELER, Cal., 56 Pac. Rep. 249.

32. CORPORATIONS — Insolvency — Stockholders.—When a corporation is insolvent, and its business is ended, the subscribers for or holders of its unpaid stock are assessable for only so much of what is unpaid on the stock as will satisfy the claims of corporate creditors, and meet the expenses of winding up its affairs.—CUMBERLAND LUMBER CO. v. CLINTON HILL LUMBER MFG. CO., N. J., 42 Atl. Rep. 585.

33. CORPORATIONS—Loans by Directors—Preferences.—A director of an insolvent corporation may not, through any advantage gained by reason of, or which may be taken of, his directorship, obtain or secure a preference of a debt of the corporation to him, or in which he is materially interested; but a judgment for such a debt, secured without any such advantage, will be upheld, even though it may work a preference of the debt.—NEBRASKA NAT. BANK OF OMAHA v. CLARK, Neb., 78 N. W. Rep. 527.

34. CORPORATIONS — Stockholders — Liability to Employees.—An attorney retained on a salary is not an "employee," within Laws 1892, ch. 688, § 54, imposing on stockholders a personal liability for corporate debts to employees for services.—BRISTOR v. SMITH, N. Y., 53 N. E. Rep. 42.

35. CORPORATIONS — Torts of Agents.—Where a corporation authorizes its State agent to make a settlement with a subagent, it is not liable to the latter for slanderous statements made by the former pending the settlement, in the absence of evidence that the corporation expressly or impliedly authorizes the statements, or ratified them.—REDDITT v. SINGER MFG. CO., N. Car., 32 S. E. Rep. 392.

36. CRIMINAL EVIDENCE—Embezzlement.—In a prosecution for embezzlement by an agent of an express company of the proceeds of money orders, proof that he disposed of money orders, and appropriated the proceeds in another State, is admissible, since the embezzlement was committed in the State where the failure to account took place.—KOSSAKOWSKI v. PEOPLE, Ill., 53 N. E. Rep. 115.

37. CRIMINAL LAW—Assault with Intent to Murder—Malice.—On a a prosecution for assault with intent to murder, evidence of a previous difficulty with the person assaulted, tending to show malice of the accused in making the assault, is competent.—ELLIS v. STATE, Ala., 25 South. Rep. 1.

38. CRIMINAL LAW — Homicide — Insanity—Degree of Crime.—Evidence of defendant's insanity cannot have the effect of reducing the degree of murder, since proof of insanity sufficient to cause irresponsibility requires an acquittal.—COMMONWEALTH v. HOLLINGER, Penn., 42 Atl. Rep. 548.

39. CRIMINAL LAW — Homicide—Principal and Accessory.—Under Hill's Ann. Laws, §§ 128, 2011, abrogating the distinction between principals and accessories, and providing that persons, whether committing a crime or aiding and abetting in its commission, shall be indicted and tried as principals, the conviction of one person charged as principal in the commission of a crime does not operate as an acquittal of another separately charged as principal in the commission of the same crime.—STATE v. BRANTON, Oreg., 56 Pac. Rep. 267.

40. CRIMINAL LAW—Homicide—Self-defense.—Where defendant, accused of homicide, claims that he acted in self-defense, and the testimony is irreconcilable as to who was the aggressor, and there is testimony that deceased had made threats against defendant's life, evidence of adulterous relations between deceased and defendant's sister is admissible to show a motive for deceased's being the aggressor, and the reason-

ableness of defendant's fear of bodily harm, if deceased was the aggressor.—GAFFORD v. STATE, Ala., 25 South. Rep. 10.

41. CRIMINAL LAW — Information — Conviction of Lower Offense.—An information for an assault with intent to commit great bodily injury, framed under section 17b of the Criminal Code, will sustain a conviction for an assault and battery, when the information discloses, by proper averments, that such minor offense was in fact included in the commission of the one charged.—MULLOY v. STATE, Neb., 78 N. W. Rep. 525.

42. CRIMINAL LAW—Insanity—Burden of Proof.—In a criminal prosecution it is reversible error to instruct the jury, upon the question of insanity, that the burden of proof shifts from the prisoner to the State during the progress of the trial.—KNIGHTS v. STATE, Neb., 78 N. W. Rep. 508.

43. CRIMINAL PRACTICE—Indictment — Conspiracy.—An indictment charged a conspiracy between a city official and one P, by which the official, to render effective demands of money to be made by P from city contractors, should willfully neglect and actively violate his legal duty as such official, and permit his subordinates to neglect and violate their duties in any particular which should appear effective in obtaining the money. Held, that the indictment was not defective for failing to charge a crime with particularity, or as not containing a plain and concise statement of the acts constituting it, as required by Code Cr. Proc. § 275.—PEOPLE v. WILLIS, N. Y., 53 N. E. Rep. 29.

44. DESCENT AND DISTRIBUTION—Statute of Descents.—The statute of descents operates upon all intestate property, and the course which it indicates can be changed only by a testamentary disposition.—MATHEWS v. KRISHER, Ohio, 53 N. E. Rep. 52.

45. DEEDS—Power of Attorney.—A donee in a power of attorney had it recorded 18 months after its execution, on the day of the recording of a deed by him of the land which he was authorized to sell, while the grantor of the power was residing in the county where the land was. The deed made no reference to the power of attorney, but there was nothing in its language or in the attendant circumstances indicating an intention to repudiate it. Held, that the deed was executed under the power of attorney.—POOL v. UNKNOWN HEIRS OF FOSTER, Tex., 49 S. W. Rep. 923.

46. EMINENT DOMAIN — Erecting Telephone Poles.—The right of a telephone company to erect a telephone line within the limits of a public highway, upon land the fee of which is owned by private persons, imposes an additional servitude upon the fee, and can be acquired, against the consent of such persons, only through the power of eminent domain.—NICOLL v. NEW YORK & N. J. TEL. CO., N. J., 42 Atl. Rep. 583.

47. EMINENT DOMAIN — Public Use.—Property taken for the laying out or altering of a street is not taken for a private use merely because an individual contributes to the cost of the improvement.—STRATFORD v. CITY OF GREENSBORO, N. Car., 32 S. E. Rep. 394.

48. ESTOPPEL — County Treasurer — Deposit with Bank.—In an action on a county treasurer's bond to recover for a defalcation, the sureties filed a cross-petition against a bank, alleging that the latter had certified to a committee, appointed by the district court to investigate the county's finances, that the treasurer had a certain credit balance in the bank, and that, relying on such certificate, the committee reported that the treasurer's account was correct, and that thereby the court and grand jury were misled. Held, insufficient to estop the bank to deny its representation, since none of the officers named had control of the county's finances, or authority to take affirmative action to protect its pecuniary interests, and hence no pecuniary loss to the county was shown.—ANDERSON v. WALKER, Tex., 49 S. W. Rep. 937.

49. ESTOPPEL — Res Judicata.—L, having contracted to purchase the assets of a trust company against which an action of trespass to try title was pending, consented that a decree might be rendered conveying to plaintiff in that suit so much of the company's land as was necessary to adjust the controversy. A decree was rendered conveying to plaintiff lands which did not belong to the trust company, which L afterwards purchased at an execution sale against the owner. Held, that he was not estopped by his agreement from recovering the land from parties claiming under the decree.—GULF CITY TRUST CO. v. HARTLEY, Tex., 49 S. W. Rep. 902.

50. EXECUTION—Levy on Corporate Stock.—Shares of stock in a corporation can only be subjected to debt by seizure under attachment or execution in the manner prescribed by the statutes relating to such seizure.—WELLS v. PRICE, Idaho, 56 Pac. Rep. 266.

51. EXTRADITION — Facts Presumed from Issuance of Warrant.—The action of the governor of a State in issuing a warrant for the surrender of an alleged fugitive from justice to the authorities of another State upon a requisition from the governor of such State is presumptive proof that the person named was in fact a fugitive from the justice of the State making the requisition.—EATON v. STATE OF WEST VIRGINIA, U. S. C. C. of App., Fourth Circuit, 91 Fed. Rep. 760.

52. FALSE IMPRISONMENT — Burden of Proof.—In an action for false imprisonment, where defendants justified on the ground of probable cause of believing plaintiff guilty of a felony, the burden of proof is on defendants.—JACKSON v. KNOWLTON, Mass., 53 N. E. Rep. 134.

53. FEDERAL COURTS — Jurisdiction — Attachment in Equity.—A federal court of equity is without jurisdiction to entertain a suit under a State statute by a contract creditor to obtain an attachment and to set aside as in fraud of creditors a conveyance by his debtor; and such a suit is not removable into a circuit court from a State court.—FIRST NAT. BANK OF PARKERSBURG v. PRAGER, U. S. C. C. of App., Fourth Circuit, 91 Fed. Rep. 689.

54. GUARANTY — Construction — Consideration.—Incumbered property was purchased for another. The purchaser instructed him to have the deed made to himself direct, "making you subject to the present bond and mortgage, now against the same," which mortgage the purchaser guarantied to pay. Held, that the consideration for the guaranty was the assumption of the incumbrance by the grantee, and not the conveyance of the property.—SERRELL v. BETTS, N. J., 42 Atl. Rep. 573.

55. GUARANTY—Discharge—Release of Security.—One accepting, as collateral, notes secured by chattel mortgage, of which one was indorsed by a guarantor, without the latter's knowledge, permitted the mortgagee depositing them to sell the personalty on credit, and surrendered the mortgage and the notes not guarantied, taking in their stead the securities given by the purchaser. Held to discharge the guarantor to the extent of the injury caused thereby.—HOLMES v. WILLIAMS, Ill., 53 N. E. Rep. 93.

56. HOMESTEAD—Abandonment.—The removal from a homestead to another State for four years, and rental it out during such time, with only occasional visits of inspection, and the failure to reoccupy the lands on the return to the State, constitute an abandonment.—GIST v. LUCAS, Ala., 25 South. Rep. 41.

57. HUSBAND AND WIFE — Abandonment.—Where a husband abandoned his wife permanently without her fault, and she was left to support herself and family by her own efforts, she could sue alone, though she knew where her husband lived.—MISSOURI, K. & T. RY. CO. v. HENNESEY, Tex., 49 S. W. Rep. 917.

58. INSOLVENCY—Discharge.—Pub. St. ch. 157, § 83, exempting a discharged insolvent from arrest in any proceeding for a debt provable against his estate, includes proceedings in which a debt so provable is joined with one accruing after the discharge.—KEOUGH v. GRIME, Mass., 53 N. E. Rep. 135.

59. INSURANCE—Liability — Warehouseman.—Where the liability of assured on cotton consigned to him was that of warehouseman, and the cotton was burned without his negligence, there could be no recovery on a policy assuring him against his "liability" on such cotton, since he was not liable.—ALLEN V. ROYAL INS. CO., Tex., 49 S. W. Rep. 931.

60. INSURANCE—Location of Property.—A policy covering the fire apparatus of a village, "while located and contained as described herein, and not elsewhere," does not cover a loss of such property when temporarily out of the building, and being used in attempting to extinguish a fire.—VILLAGE OF L'ANSE V. FIRE ASSN. OF PHILADELPHIA, Mich., 78 N. W. Rep. 465.

61. INTOXICATING LIQUOR—Manufacturer Carrying on Business.—A manufacturer of intoxicating liquors, who carries on the business of selling them elsewhere than at the manufactory, is engaged in the traffic, within the purview of section 4364-9, Bate's Ann. St., and subject to the tax thereby imposed.—JUNG BREWING CO. V. TALBOT, Ohio, 53 N. E. Rep. 51.

62. JUDGMENT—Equity—Injunction.—After an assignment of a judgment against plaintiff was filed under Rev. St. 1895, art. 4647, a second judgment was rendered against him on his answer, as garnishee, that he owed the original judgment creditor the amount of the judgment. Held, that injunction would not lie to prevent the collection of either of the judgments, as equity will not grant relief against a final judgment in the absence of fraud.—MASON V. HOUSE, Tex., 49 S. W. Rep. 911.

63. JUDGMENT — Res Judicata.—In an action to foreclose a mortgage given to indemnify bail, a judgment of foreclosure was reversed because, the bail bond not having been paid, the action was premature. The reversal was affirmed by the court of appeals, and judgment absolute in favor of defendnat was entered pursuant to the usual stipulation that such judgment might be entered on affirmance, given by plaintiff. Held, that such judgment was not a bar to an action to foreclose the mortgage, brought after paying the amount of the bail bond.—MOLONEY V. NELSON, N. Y., 53 N. E. Rep. 31.

64. JUDICIAL SALE—Deed—Date.—A deed for real estate executed by an officer of a court pursuant to its order confirming a judicial sale previously made takes effect by relation on the day of the sale, and vests in the purchaser the right to intermediate rents.—JASHENOSKY V. VOLRATH, Ohio, 53 N. E. Rep. 46.

65. JUDICIAL SALES—Return—Appraisement.—A judicial sale is not void because the sheriff, in making his return thereon, by mistake recites that he received the order of sale on a date different from that on which he actually received it.—BEARDSLEY V. HIGMAN, Neb., 78 N. W. Rep. 510.

66. LIFE INSURANCE—Construction of Policy—Term Insurance.—A life insurance policy in terms insuring the holder for one year from its date, but containing a provision for its renewal from year to year during the life of the assured by the payment of successive annual renewal premiums, is not an entire contract for the life of the assured, but is a valid "term insurance contract for one year," within the Laws of N. Y. 1892, ch. 690, § 92, which is specially excepted by that section from its general provision that no policy shall be declared forfeited or lapsed for non-payment of premiums without the prescribed notice to the insured.—ROSENPLAENTER V. PROVIDENT SAV. LIFE ASSUR. SOC. OF NEW YORK, U. S. C. C., W. D. (Tenn.), 91 Fed. Rep. 728.

67. MARRIED WOMEN—Separate Estate—Exemptions.—A married woman owning the real estate where a business was carried on, and all the stock in trade in the business, where her husband carries on the business and pays no rent, is doing business on her own account, within Pub. St. c. 147, § 11, so that the stock in trade is subject to attachment by her husband's creditors, where no certificate of the nature and location of the business was filed by her, as required.—DESMOND V. YOUNG, Mass., 53 N. E. Rep. 151.

68. MASTER AND SERVANT—Assumption of Risk.—The fact that a servant whose duty it was to uncap filled molds of iron assumed the danger from explosions likely to happen because of the unavoidable escape of small quantities of slag into the molds does not make an explosion occasioned by the intentional act of the party attending to the filling of the molds, in permitting slag to pass into the molds in quantity known to be dangerous, one of the assumed risks of his employment, as a matter of law.—ILLINOIS STEEL CO. V. BAUMAN, Ill., 53 N. E. Rep. 107.

69. MASTER AND SERVANT—Obvious Defects — Risks Assumed.—An employee injured from falling from a ladder predicated his right to recover on the fact that the brick floor on which the ladder stood was defective. The only defect shown was a depression caused by taking out pipes, and replacing the brick floor. The condition of the floor was obvious when plaintiff entered on his employment, and was not changed before the accident, and the construction was of a permanent character. Held, that the employee assumed the risk.—NEALAND V. LYNN & B. R. CO., Mass., 53 N. Rep. 137.

70. MECHANICS' LIENS — Attorney's Fees — Constitutional Law.—Under Mechanic's Lien Act 1893, § 18, providing for taxation of attorney's fees in foreclosure of mechanics' liens in which plaintiff shall obtain judgment and decree of foreclosure, such fee can be based only on the claims embraced in the judgment and decree of foreclosure, and not on claims settled pending suit. Mechanic's Lien Act 1893, § 18, providing for attorney's fees in foreclosures of mechanics' liens, is violative of the United States Constitution, as class legislation.—LOS ANGELES GOLD MINE CO. V. CAMPBELL, Colo., 56 Pac. Rep. 246.

71. MECHANIC'S LIEN—Property Subject — Waiver.—A person who is entitled to a mechanic's lien by reason of material furnished or work done, is entitled to a lien on the whole of the building constructed or improved, together with so much of the lot or lots on which the building so constructed or improved stands as may be necessary for the full use and enjoyment of the property.—MOUNTAIN ELECTRIC CO. V. MILES, N. Mex., 56 Pac. Rep. 284.

72. MORTGAGES—Limitations.—A subsequent purchaser of mortgaged land, whether under a voluntary or forced sale, may plead limitations against the mortgage debt, though the debtor waives it, and renews the debt, since the mortgaged property stands as surety for the debt, and whatever releases the principal releases the surety.—LEVY V. WILLIAMS, Tex., 49 S. W. Rep. 930.

73. MORTGAGES—Married Women—Liability as Sureties.—A husband applied for and obtained a loan on the representation that the land offered as security belonged solely to him. The money was paid to him, and used by him partly in paying his debts and partly in improving the land, which in reality belonged to his wife, who joined him in the note and mortgage without knowledge of how the proceeds were to be used. Held, that the debt was that of the husband, and hence the wife is only a surety, which makes the mortgage and note void as to her, under Code 1896, § 2529.—RICHARDSON V. STEPHENS, Ala., 25 South. Rep. 39.

74. MORTGAGE FORECLOSURE—Deficiency Judgment.—In a suit to foreclose a real estate mortgage, the failure of the court in rendering its decree of foreclosure to determine the issue tendered as to the liability of one of the defendants for a deficiency judgment does render the decree interlocutory, or erroneous, or invalidate the sale made thereunder.—BROWN V. JOHNSON, Neb., 78 N. W. Rep. 515.

75. MUNICIPAL CORPORATION—Dedication of Streets.—By the plat of a town, a triangular piece of ground was left unincloset at the eastern extremity of a

street. All other streets running in the same direction were left open on the east by the platter, to connect with streets of additions likely to be made, in which event the triangle would be necessary. The town, by resolution, opened up for traffic such street for its full length, and worked a portion thereof. Held, that such triangular strip was dedicated to and accepted by the town, and was within the street.—MCHUGH v. TOWN OF MINOCQUA, Wis., 78 N. W. Rep. 478.

76. MUNICIPAL CORPORATIONS—Powers of Council.—Where a municipal corporation formally declares that an executed contract for a local improvement has been abandoned, and refuses to levy an assessment to raise money to pay the price, the contractor may sue therefor, though the contract provides that no payment shall be made until the cost is collected by assessment.—WESTON v. CITY OF SYRACUSE, N. Y., 53 N. E. Rep. 12.

77. MUNICIPAL CORPORATIONS—Sewers—Assessments.—An ordinance providing for the construction of a sewer does not, by authorizing property owners within the district assessed for its construction to make connections therewith, the right to regulate the manner of making such connections being reserved to the town, grant away the municipality's police power.—GRAY v. TOWN OF CICERO, Ill., 53 N. E. Rep. 91.

78. MUNICIPAL CORPORATIONS—Streets—Obstructions.—The authority of a railroad company to construct its road across a street, with the assent of the municipal authorities, does not entitle it to obstruct a street with abutments or piers, in support of its structure, to the great inconvenience of the public.—DELAWARE, L. & W. R. CO. v. CITY OF BUFFALO, N. Y., 53 N. E. Rep. 44.

79. MUNICIPAL CORPORATIONS—Street Sprinkling—Assessments.—St. 1897, ch. 419, § 2, requiring assessments for street sprinkling to be in proportion to the foot frontage of each estate on the street watered, does not provide for a tax, as to improved property, so in excess of the benefit received as to be a taking of property without compensation, in violation of Const. U. S. Amend. 14, as not due process of law.—SEARS v. BOARD OF ALDERMAN OF CITY OF BOSTON, Mass., 53 N. E. Rep. 138.

80. MUNICIPAL CORPORATIONS — Violation of Ordinance.—Where a person accused of violating a village ordinance has been arrested, brought before the village mayor, the case adjourned for trial to a certain hour of a future day, and the accused, after giving bail for his appearance for trial at the time fixed, is liberated, and fails to appear at the hour fixed for his trial, such mayor is without jurisdiction to proceed with the trial until the accused appears; and should the mayor, in the absence of the accused, proceed to try, convict, and sentence him, such conviction and sentence will be void.—TRUMAN v. WALTON, Ohio, 53 N. E. Rep. 57.

81. MUNICIPAL IMPROVEMENTS—Benefits.—In proceedings to determine the question of benefit to certain property derived from the improvement of a street, evidence that the improvement has already been paid for by the commissioners in charge of the improvement is inadmissible.—SWEET v. WEST CHICAGO PARK COMMRS., Ill., 53 N. E. Rep. 74.

82. NEGLIGENCE—Dangerous Premises.—An owner of a building gave permission to certain parties to use certain rooms in the building until such time as repairs should be begun in the building. After the repairs were commenced, such persons continued to use the rooms. Held, that a third party, attempting to use the rooms after the repairs were begun, on the invitation of the licensee, and injured because of the dangerous condition of the passageway because of the repairs, could not recover from the owner of the building.—BREHMER v. LYMAN, Vt., 42 Atl. Rep. 613.

83. PARTNERSHIP — Termination.—Where a partner notifies his partner in writing that he will not pay another dollar into the firm, and that, if such other partner cannot carry on the business with the then capital, and will not put in any more, he had better wind it up, it terminates the partnership, except in so far as was necessary to wind up the business.—AVERY v. CRAIG, Mass., 53 N. E. Rep. 153.

84. PLEADING—Partnership.—Where parties are sued jointly, and are described as doing business under a firm name, it is error to exclude evidence of one that he was not a partner of the other at the time of the transaction in suit, though such partnership is not put in issue by a special plea.—MCKISSACK v. WITZ, Ala., 25 South. Rep. 21.

85. PLEDGES — Conversion.—A pledgee of chattels, who converts them, is liable to the owner for only the excess of their value over his lien.—FARRAR v. PAINE, Mass., 53 N. E. Rep. 146.

86. PRINCIPAL AND SURETY—Sureties—Application of Funds.—Where a dealer borrowed sums from different persons to buy cattle with which to fulfill contracts for the delivery of cattle, a surety on one of the loans, who had also personally advanced money to the dealer for the same purpose, and who received the proceeds of the cattle contracts, might apply such proceeds to his individual loan, and was not bound, as against a cosurety, who afterwards renewed the suretyship with knowledge of the facts, to distribute such proceeds ratably among all the lenders, both the sureties being also sureties on the cattle contracts.—SANDERS v. WETTERMARK, Tex., 49 S. W. Rep. 900.

87. PROCESS — Execution.—An officer charged with the execution of process must do so unless it is void on its face, or the court issuing it is without jurisdiction; but he is not bound to inquire into the regularity of the proceedings prior to its issuance.—SPEAR v. STATE, Ala., 25 South. Rep. 46.

88. RAILROAD COMPANY—Condemnation of Land.—In a condemnation of real estate for railroad purposes, the *de jure* existence of the company cannot be determined, since whether or not it has a legal existence can only be inquired into in a direct proceeding.—MORRISON v. FORMAN, Ill., 53 N. E. Rep. 73.

89. RAILROAD COMPANY — Leased Railroads — Negligence.—A railroad company which has leased its road is liable for negligence of its lessee in operating it, unless its charter, or a subsequent act of the legislature, specially exempts it from liability.—PIERCE v. NORTH CAROLINA R. CO., N. Car., 32 S. E. Rep. 399.

90. RAILROAD COMPANY—Mortgage — Subsequent Extension of Line.—A mortgage by a railroad company of "the railway, rails, bridges, and real estate belonging to or held by said company," and "all the tolls, incomes, issues, and profits to accrue from the same or any part thereof," does not cover an after-acquired line or extension of the road, as it is, in terms, limited to that then owned by the mortgagor, and the income mortgaged is also limited to that accruing "from the same."—LOUISVILLE TRUST CO. v. CINCINNATI INCLINED-PLANE RY. CO., U. S. C. C., S. D. (Ohio), 91 Fed. Rep. 699.

91. RAILROAD COMPANY — Negligence.—It is negligence for a railroad company, in digging a trench along its track near a crossing, to throw a pile of dirt into the highway, so as to frighten horses thereon.—PARKS v. SOUTHERN RY. CO., N. Car., 32 S. E. Rep. 887.

92. RAILROAD COMPANY—Negligence — Contributory Negligence.—Though train employees do not intend to run cars into a street crossing, and the cars do not in fact reach the street, so that no crossing signals are necessary, yet the cars may be put in motion so near the street in a manner and under circumstances that would be negligence as to travelers thereon.—SAN ANTONIO & A. P. RY. CO. v. PETERSON, Tex., 49 S. W. Rep. 924.

93. RAILROAD COMPANY — Right of Mortgagee—Road.—Neither the mortgagee of a railroad property nor the purchaser at sale under the mortgage is entitled to enforce the covenants of a lease made by the mortgagor after the execution of the mortgage, binding the lessee to make good all depreciation of the property from wear or otherwise during the term of the lease, when the depreciation was such as would or might have followed the use of the property by the mortgagor, and

would not have constituted waste, which could have been restrained or recovered for by the mortgagee.—GRAND TRUNK RY. CO. v. CENTRAL VT. R. CO., U. S. C. C., D. (Vt.), 91 Fed. Rep. 696.

94. RAILROAD COMPANY — Street Railways — Negligence.—In the absence of any other adequate explanation, negligence of a street-car company may be inferred from the going off the track of a car, injuring a passenger, there being evidence that it had gone off the track an hour before, and that immediately before it again ran off, causing plaintiff's injury, it was running at the rate of 15 miles an hour, down a grade, and around a curve.—HARRIMAN v. READING & L. ST. RY. CO., Mass., 53 N. E. Rep. 156.

95. REAL ESTATE BROKER — Commission.—Under a real estate broker's contract to find a purchaser it is not essential, to his earning commissions, that he literally bring the vendor and vendee together, or that he even inform the vendor of the identity of the proposed purchaser. It is sufficient if, by his influence on the mind of the vendee, he be the efficient cause of the two assuming the regulations of vendor and vendee.—HAMBLETON v. FORT, Neb., 78 N. W. Rep. 498.

96. RELIGIOUS SOCIETIES — Evidence—Ecclesiastical Government.—The ecclesiastical government of Baptist churches is purely congregational, each church being a sovereignty, and the councils being advisory merely; and hence a resolution by a council that no person believing in Martinism should be recognized, and that the council was the only competent authority to determine its membership, and the action of a Baptist association and a general convention in recognizing a dissenting minority of a particular congregation as the true Baptist church, was conclusive on the majority only as to who should be recognized as members of such councils, but not as to which branch of a divided church was the true one.—JARRELL v. SPROLES, Tex., 49 S. W. Rep. 904.

97. REPLEVIN BOND — Evidence.—Evidence that defendant in replevin was not the owner of the horse replevied is admissible on the question of the amount for which he should have execution, in an action by him for breach of condition of the replevin bond in failing to enter the replevin writ.—EASTER v. FOSTER, Mass., 53 N. E. Rep. 132.

98. RES JUDICATA — Conclusiveness.—A decree foreclosing a vendor's lien, and adjudging the title and right of possession to be in the vendor, is conclusive against the assignee of a subsequent mortgagee, who was not made a party but who employed attorneys to represent his interest.—BOMAR v. FT. WORTH BLDG. ASSN., Tex., 49 S. W. Rep. 914.

99. SET-OFF — Pleading.—A plea of set-off, alleging that at the time suit was commenced plaintiff was indebted to defendant in a certain sum, by liquidated or by unliquidated demand, as the case may be, amounting to said sum, to-wit, a certain date, and due at that date to defendant, is not objectionable as failing to show what the demand is, or when it was due.—FINNEY v. DENNY, Ala., 25 South. Rep. 45.

100. SPECIFIC PERFORMANCE.—Even when time is made of the essence of a contract, the failure of a party to comply with a condition within the particular time limited will not work a forfeiture nor defeat the right to enforce specific performance, where such condition is complied with within a reasonable time, and no circumstances have intervened to render it unjust or inequitable to grant such relief, but, on the contrary, it would be inequitable to withhold it.—CAMP MFG. CO. v. PARKER, U. S. C. C. of App., Fourth Circuit, 91 Fed. Rep. 705.

101. SPECIFIC PERFORMANCE—Laches.—Mere lapse of time before resort to a court of equity to compel an assignment of a part interest in a patent to which a complaint is equitably entitled, will not necessarily bar a decree for such relief; but if the delay be great, and the circumstances such as to make it inequitable to permit an account of profits to be demanded, an assignment will be decreed only on terms that an accounting be denied.—HARRIGAN v. SMITH, N. J., 42 Atl. Rep. 579.

102. TAXATION—Assessment.—A petition to restrain the collection of a tax because based on a fraudulent overvaluation of the assessor, which alleges merely that the assessment was never by the assessor presented to the board of equalization, or passed on directly by such board, does not show that the board did not approve the assessment complained of.—CLAWSON LUMBER CO. v. JONES, Tex., 49 S. W. Rep. 909.

103. TAXATION—Exemptions — Library Buildings.—A library building leased for a term of years by the library association, on condition that the lessee should keep a public reading room similar to one formerly kept by the association on one floor of the two-story building, is not real estate occupied by a library association "solely" for library purposes, within Pub. Acts 1893, No. 206, § 7, subd. 4, so as to be exempt from taxation.—IN RE WOMEN'S TEMPERANCE ASSN. OF MANISTEE, Mich., 78 N. W. Rep. 466.

104. TAXATION—Legality—Recovery of Payments.—The statutes provide two methods of recovering back illegal taxes paid under protest. When the tax is imposed on land not subject thereto, or which has been twice assessed for the same year, the person paying the tax must present a claim to the county board; and, if it be not allowed, he must, if he wishes further to contest, appeal to the district court; but if the tax be levied for an illegal or unauthorized purpose, or if the tax be bad for any other cause not falling within the first class, he may maintain an original action therefor. Chicago, B. & Q. R. Co. v. Nemaha Co., 69 N. W. Rep. 958, 50 Neb. 393, followed.—CHASE COUNTY v. CHICAGO, B. & Q. R. CO., Neb., 78 N. W. Rep. 502.

105. TRADE-NAME—Injunction. — Where a manufacturer of watches in the city of Waltham had acquired a great reputation, and had used the word "Waltham" originally in a mere geographical sense in connection with his watches, but such word had, by long use, come to have a secondary meaning, as a designation of the watches which the public had been accustomed to associate with the name, another person beginning the manufacture of watches a long time thereafter would be enjoined against using the words "Waltham" or "Waltham, Mass.," upon plates of its watches, without some statement distinguishing them from watches made by plaintiff.—AM. WALTHAM WATCH CO. v. U. S. WATCH CO., Mass., 53 N. E. Rep. 141.

106. TROVER—Defenses. — Defendants in trover for stock cannot show that an assignment of the stock to plaintiff was fraudulent; it being before plaintiff delivered it to one of the defendants, and before suit by one of the defendants against the assignor, in which the stock was attached.—HINE v. COMMERCIAL BANK OF BAY CITY, Mich., 78 N. W. Rep. 471.

107. TRUSTS—Bank Deposits.—To prevent competition in securing a deposit of municipal funds, a banker agreed with two other banks that, in consideration of their offering a lower rate of interest than he, the deposit should be equally distributed between the three, and that he would not withdraw any of it from them except to pay drafts on him by the municipality. He also agreed with the sureties on his indemnity bond to the city to make such deposits in said banks to secure them. Held, that the city was entitled to funds deposited in the banks pursuant to the agreement with them and with the sureties, as against the banker's assignee for the benefit of creditors, since they were held by the banks in trust for it.—CITY OF MARQUETTE v. WILKINSON, Mich., 78 N. W. Rep. 474.

108. TRUSTS—Construction—Enforcement. — Beneficiaries who have the right to require the trustee to sell and convey the trust estate free from the trust may require him to do so without his receiving any consideration, it being a matter strictly between the beneficiaries and the grantee.—TAYLOR v. WALSON, Ill., 53 N. E. Rep. 95.

109. TRUSTS—Misconduct of Trustee.—A bank agreed with a trustee to deposit securities with it as collateral

to the certificates of deposit. The trustee mailed a receipt of the collaterals deposited to the bank, stating that they were deposited to secure such certificates. The time when this receipt was delivered to the depositor did not appear, but it was found among his papers after his death, and he had knowledge of the deposit prior to his death. Held, in an action against the trustee for surrendering the securities without authority, that it would be presumed that the bank delivered the receipt to the depositor within a reasonable time after receiving it, and that he accepted it.—SEEHORN v. AMERICAN NAT. BANK, Mo., 49 S. W. Rep. 886.

110. TRUST DEED—Satisfaction—Failure to Discharge on Record.—Civ. Code 1886, § 1869, provides that if, on satisfaction of a "mortgage," the holder thereof does not discharge it of record within three months after a written request by the mortgagor, the holder shall forfeit a penalty. Held, that the maker of a trust deed to secure a debt due to defendant cannot recover the penalty on defendant's refusal to satisfy the deed of record within three months after written request, as a trust deed is not a mortgage within the statute.—SOUTHERN BLDG. & LOAN ASSN. v. MCCANTS, Ala., 25 South. Rep. 8.

111. TRUSTS AND TRUSTEE — Right of Beneficiary to Sue.—A beneficiary cannot sue the trustees at law for his share, where the amount thereof has not been determined, nor the accounts of the trustee settled.—HUSTED v. THOMSON, N. Y., 53 N. E. Rep. 20.

112. USURY — Mortgages—Shares of Stock.—The mere fact that certain shares of stock in the mortgagor company were found among the effects a deceased mortgagee, and that the promoter of the mortgagor company, in negotiating with the representatives of the mortgagee, had promised certain shares of stock in the company as an inducement to bring about the loan secured by the mortgage, is insufficient to show usury in the transaction, where one of said representatives testified that the agreement was merely that he was to have shares of stock for his services, and that after the loan he gave the certificate of stock, found among decedent's effects, to decedent, as a gift.—SHORT v. POST, N. J., 42 Atl. Rep. 569.

113. VENDOR'S LIEN—Vendor Trustee for Purchaser.—A vendor of real estate, who has not executed a deed, has a lien upon the vendee's equitable estate as security for payment of the purchase money according to the terms of the agreement, and holds the legal title in trust for the purchaser.—HASLAM v. HASLAM, Utah, 56 Pac. Rep. 243.

114. VENDOR AND PURCHASER — Pleading.—Where a vendor, in a suit for specific performance of an agreement to pay off a mortgage on the land conveyed, answered that the contract was procured by fraud, and asked that it be canceled, but failed to appear at the hearing, and permitted judgment to go against him that he pay off the mortgage, the judgment was a conclusive adjudication as to the alleged fraud.—BARBER v. KENDALL, N. Y., 53 N. E. Rep. 1.

115. WATERS—Wharves — Piers.—A pier constructed from a wharf into the river, on land belonging to the State, by permission of the city, and under statutory authority, where its maintenance by itself would destroy the use of the wharf, is an accretion to the wharf, and both are real property.—BEDLOW v. BEDLOW, N. Y., 53 Pac. Rep. 26.

116. WATER COMPANIES — Regulation of Rates.—Act June 6, 1891, authorizes incorporated cities to fix the rates for the supply of water furnished by any company or corporation to cities and the inhabitants thereof. Held not unconstitutional so far as it applied to city ordinances passed before its enactment, which fixed particular rates or charges for water supplies.—CITY OF DANVILLE v. DANVILLE WATER CO., Ill., 53 N. E. Rep. 118.

117. WILLS — Action for Legacy.—A legatee suing trustees under the will for support, payable, under the will, out of the rents of certain land, need not make as parties other legatees, whose support is payable out of the rents of the same land, and who have an estate in remainder in the land, in order to obtain a judgment for support pending the action.—MCCREARY v. ROBINSON, Tex., 49 S. W. Rep. 933.

118. WILLS — Bequest of Use of Residence.—A will gave testator's widow the use of his homestead dwelling and buildings connected therewith, and the right to certain provisions, with the right of offering a home to her parents and testator's brother and sister, should she desire to do so, for any period she chose, and as long as she continued to reside therein. Another clause bequeathed certain property, including the homestead dwelling, in trust, with power to sell, except that the homestead should not be sold while testator's wife and sister, or either of them, resided thereon. In case of the widow's death before that of the sister, the trustees should tender to the latter the free occupancy of said dwelling during her life, with the same privileges as the wife enjoyed. Held, that the sister had no right to occupy the dwelling until after the widow's death.—REEVE v. TROTH, N. J., 42 Atl. Rep. 571.

119. WILLS—Construction—Equitable Conversion.—A clause of a will, void as devising real estate to aliens, does not make void, for repugnancy, a subsequent clause converting it into personalty, and providing for payment thereof to the same persons.—GREENWOOD v. GREENWOOD, Ill., 53 N. E. Rep. 101.

120. WILLS—Precatory Trust.—Testator appointed his widow his executrix, with directions that a certain house be not sold during her life, but used as a home for herself and their children. He also directed that no part of the real estate should be sold during the widow's life, unless necessary to support herself and children. The third item read: "Having full faith and confidence in my beloved wife, and knowing that she will wisely and prudently manage the affairs of the family and look after the welfare of our children, I therefore bequeath" all the estate to her, to be expended for her own use and for the support of the home for herself and the children. Held, that the wife took a fee in all the property, since the words are insufficient to create a precatory trust.—LLOYD v. LLOYD, Mass., 53 N. E. Rep. 148.

121. WILLS—Trusts—Devise Over.—A testator devised all his property to his only daughter, subject to the life estate of his wife, appointing his brother as trustee to manage it until she should attain majority, when it was to be made over to her, if she should be then living. In case of her death without issue, the property was to go to nephews and nieces. At the making of the will the daughter was 9 years old, and at testator's death 13. Held, that the death of the daughter contemplated was during her minority, and her title was absolute after majority.—COLBY v. DOTY, N. Y., 53 N. E. Rep. 35.

122. WILLS—Vested Remainder—Trust Deeds.—Pursuant to a decree of divorce requiring the husband to convey certain property in trust for the maintenance of his children and divorced wife, he conveyed lands owned by him in fee to a trustee, by deed requiring the trustee to sell them, invest the proceeds, and pay the income to the wife during her life, and on her death to reconvey the entire trust fund to the grantor or his heirs. Held, that the deed conveyed a life estate only in trust for the wife, and hence the remainder of the husband was vested.—HOBBIE v. OGDEN, Ill., 53 N. E. Rep. 104.

123. WITNESSES—Transactions with Decedents.—Under Starr & C. Ann. St. ch. 51, § 2, prohibiting a party from testifying when the adverse party is an executor, etc., unless when called as a witness by such adverse party, etc., the deposition of complaint, taken at his own instance, cannot be considered, where defendant dies pending suit, but before testifying therein, even though deponent had been cross-examined, and was called and cross-examined at the trial by defendant.—SMITH v. BILLINGS, Ill., 53 N. E. Rep. 81.